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7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE NORTHERN DISTRICT OF TEXAS**

9

10 MARK LANING, ARTHUR LOPEZ, individually,
11 and on behalf of themselves, and all others
similarly situated individuals,

12 Plaintiffs,

13 V.

14 NATIONAL RECALL & DATA SERVICES, INC.,
15 a Nevada Corporation, CHARLES HOLLEY,
16 an individual, NAVISS, L.L.C., a Missouri
17 Corporation, CLAYTON LOGOMASINI, an
Individual; JASON CHRISCO, an Individual; and
18 Doe Individuals and Corporations 1-100
inclusive,

19 Defendants.

20

21 **CLASS ACTION COMPLAINT**

22 **JURY DEMAND**

23 **COMPLAINT FOR:**

24 Violations of the Driver's Privacy
25 Protection Act, 18 U.S.C. §2721 et seq.

COMPLAINT—CLASS ACTION

COMES NOW, Plaintiffs, Mark Laning and Arthur Lopez; individually, and on behalf of themselves and all others similarly situated individuals, by and through their Attorney, Joseph H. Malley, with the Law Offices of Joseph H. Malley, P.C., move for as and for their complaint, and demanding trial by jury, allege as follows upon information and belief, based upon, *inter alia*, investigation conducted by and through their attorney, which are alleged upon knowledge, bring their legal action against National Recall & Data Services, Inc., Charles Holley, Naviss, L.L.C., Clayton Logomasini, Jason Chrisco, and Doe Individuals and Corporations 1-100 inclusive., (hereinafter referred collectively to as "Defendants"). Plaintiff's allegations as to themselves and their own actions, as set forth herein, are based upon their personal knowledge, and all other allegations are based upon information and belief pursuant to the investigations of counsel. Based upon such investigations, Plaintiffs believe that substantial evidentiary support exists for the allegations herein, or that such allegations are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery.

The true names and capacities, whether individual, corporate, associate, director, officer, agent, its employees, officers, directors, legal representatives, heirs, assigns, successors, individual or corporate entities acting within a partnership, joint venture, trust, association, union, subsidiaries, whether wholly or partially owned, divisions, whether incorporated or not, affiliates, branches, joint ventures, franchises, operations under assumed names, websites, and entities over which it exercises supervision or control, or group of individuals associated in fact, although not a legal entity, or other legal entity, of each of the Defendant Doe Individuals and Corporations 1-100 inclusive, (hereinafter

1 referred collectively to as "Doe"), are unknown to Plaintiffs at their time and therefore
2 Plaintiffs sues Doe by such fictitious names. Plaintiffs will ask leave of the Court to amend
3 their complaint to show the true names and capacities of Doe when that information is
4 ascertained. Plaintiffs is informed and believes, and thereon alleges, that each of the
5 Defendants designated herein as Doe are legally responsible in some manner for the
6 performance of the acts and omissions described below, and are liable for the events and
7 happenings alleged, and in such manner, proximately caused harm to Plaintiffs as further
8 alleged.

9
10 Defendants National Recall & Data Services, Inc., Charles Holley, Naviss, L.L.C.,
11 Clayton Logomasini, Jason Chrisco, and Doe Individuals and Corporations 1-100 and each of
12 them, are individually sued as participants, co-conspirators, and aiders and abettors in the
13 improper acts, plans, schemes, and transactions, including but not limited to acts, whether
14 individual, corporate, associate, director, officer, agent, its employees, officers, directors,
15 legal representatives, heirs, assigns, successors, individual or corporate entities acting
16 within a partnership, joint venture, trust, association, union, subsidiaries, whether wholly
17 or partially owned, divisions, whether incorporated or not, affiliates, branches, joint
18 ventures, franchises, operations under assumed names, websites, and entities over which
19 it exercises supervision or control, or group of individuals associated in fact, although not a
20 legal entity, or other legal entity, of each of the Defendants, that are the subject of their
21 complaint.

I. **NATURE OF ACTION**

1. Plaintiffs bring their consumer Class Action lawsuit pursuant to Federal Rules of Civil Procedure 23(a), (b)(1), (b)(2), and (b)(3), on behalf of themselves and a proposed class of similarly situated Individuals, (hereinafter referred to as “Class Members”), who were victims of unfair, deceptive, and unlawful business practices; wherein their privacy and security rights, were violated by Defendant National Recall & Data Services Inc. , (hereinafter referred individually to as “National”), and Defendant Charles Holley, and knowingly authorized, directed, ratified, approved, acquiesced, or participated, in conduct made the basis of their class action, acting in a capacity best described colloquially to as a “Supplier,” acting independently, and in concert, with Naviss, L.L.C., Clayton Logomasini, Jason Chrisco, and Doe Individuals and Corporations 1-100 inclusive, (hereinafter referred individually to as “Doe” and collectively referred to as “National Affiliates”), and each knowingly authorized, directed, ratified, approved, acquiesced, or participated, in conduct made the basis of their class action, in a capacity best described colloquially to as “Distributors”, in acts that include one (1) or more of the following:

1. Obtain, Plaintiff's and Class Members' Motor Vehicle Records, (hereinafter referred to as MVRs"), from State Motor Vehicle Departments, without their express consent, for purposes that violated the Driver's Privacy Protection Act (hereinafter referred to as "DPPA");
2. Re-disclose, directly or indirectly, Plaintiff's and Class Members' MVRs, without their express consent, for purposes that violated the DPPA;
3. Re-sell, directly or indirectly, Plaintiff's and Class Members' MVRs, without their express consent, for purposes that violated the DPPA.

1 2. The nature of their action includes a sequence of events, each which violates the DPPA

2 individually and collectively, wherein:

3 a. Defendant National Recall & Data Services Inc. and Defendant Charles Holley,
4 obtained Plaintiff's and Class Members' motor vehicle records from State Motor
5 Vehicle Departments, for direct marketing, without authorization and express
6 consent, in order to perpetuate fraudulent activity that violated the Federal Driver
7 Privacy Protection Act, perpetuating such activity in a heedless, willful, and wanton
8 manner, knowingly disregarding the safety and privacy of Plaintiffs and Class
9 Members;

10 b. Defendant National Recall & Data Services Inc. , and Defendant Charles Holley,
11 intentionally, or in the alternative, negligently re-disclosed and/or resold Plaintiff's
12 and Class Members' motor vehicle records from State Motor Vehicle Departments
13 to National Affiliates, for direct marketing, without their authorization and express
14 consent, in order to perpetuate fraudulent activity that violated the Federal Driver
15 Privacy Protection Act perpetuating such activity in a heedless, willful, and wanton
16 manner, knowingly disregarding the safety and privacy of Plaintiffs and Class
17 Members, and on occasions, acting, or omitting to act, in a negligent manner,

18 (Gordon v. Softech Int'l, Inc., U.S., No. 13-533, cert. den. 1/13/14; Arcanum
19 Investigations, Inc. v. Gordon, U.S., No. 13-539, cert. den. 1/13/14);

20 c. Defendants acted independently, and in concert, and each knowingly authorized,
21 directed, ratified, approved, acquiesced, or participated, in conduct made the basis
22 of their class action. Defendants obtained Plaintiffs, and Class Members', MVRs to
23 use, process, store, re-disclose, resell, and purchase Personal Identifying

1 Information, derived in whole or part, from Plaintiffs and Class Members' MVRs,
2 maintained by the State Motor Vehicle Department in acts which include, but are
3 not limited to, conducting, aiding and abetting, assisting, facilitating, participating in
4 a pattern of conduct, an enterprise affecting interstate commerce, including as a
5 direct market provider of MVRs, to market and solicit, directly or indirectly, Plaintiffs
6 and Class Members, without their express consent.

7
8 d. Plaintiffs suffered an injury in fact, an invasion of a legally protected interest
9 which was concrete and particularized, a harm that was actual or imminent.

10
11 3. On information and belief, each Defendant used additional parties to commit such acts,
12 made the basis of their action, individually and jointly, both intentionally and
13 negligently, in whole or part, acting as a direct, or contributory party, to the action made
14 the basis of their action. Pending discovery of such affiliates' involvement, acts
15 complained of, and made the basis of their complaint, Plaintiffs will amend the
16 complaint to include such parties.

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18 II.
19 PARTIES

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21 4. Plaintiff Mark Laning is an individual residing in Dallas County, Texas, and is a licensed and
22 registered driver in the State of Texas. His motor vehicle records, includes name, address,
23 VIN number, vehicle type, make, model, year, and license plate number. Plaintiff Laning's
24 motor vehicle records were obtained by Defendant National Recall & Data Services, Inc.
25 and Defendant Charles Holley then re-disclosed and/or resold to National Affiliates for
26 purposes that included direct marketing use, which resulted in a direct marketing letter
27 being sent to Plaintiff Laning, without his express consent, by "Vehicle Administration

1 Center", an affiliation of Naviss, L.L.C., and owned by Clayton Logomasini, and Jason
2 Chrisco.

3 5. Plaintiff Arthur Lopez is an individual residing in Dallas County, Texas, and is a licensed and
4 registered driver in the State of Texas. His motor vehicle records, includes name, address,
5 VIN number, vehicle type, make, model, year, and license plate number. Plaintiff Lopez's
6 motor vehicle records were obtained by Defendant National Recall & Data Services, Inc.
7 and Defendant Charles Holley then re-disclosed and/or resold to National Affiliates for
8 purposes that included direct marketing use, which resulted in a direct marketing letter
9 being sent to Plaintiff Lopez, without his express consent, by "Vehicle Administration
10 Center", an affiliation of Naviss, L.L.C., and owned by Clayton Logomasini, and Jason
11 Chrisco.

12 6. Defendant National Recall & Data Services, Inc. a Nevada Corporation, does business
13 within their State, was doing business within their State during the Class Period, and
14 may be served with process by serving its registered agent: Eastbiz.com, Inc. 5348 Vegas
15 Drive, Nevada, 89108.

16 7. Defendant Charles Holley an individual that does business in Texas, was doing business
17 within their State during the Class Period, and who may be served with process by
18 serving Defendant Charles Holley at 5606 S.P.I.D., Suite D PMB 294, Corpus Christi, TX.
19 78412.

20 8. Defendant NAVISS, L.L.C., f/n/a and f/d/b/a North American Vehicle insurance
21 Specialists, LLC, VSC 101, Services, LLC, North American Insurance Specialists, Vehicle
22 Administration Center, VSC Administration, North American Insurance Services, and
23 Warranty Consultants Groups, LLC., each lacking a separate corporate identity,
24

(hereinafter referred collectively to as "NAVISS"), is a Missouri limited liability company authorized to do business in Texas and who may be served with process by serving the Texas Secretary of State at Citations Unit, P.O. Box 12079, Austin, Texas 78711-2079. Upon information and belief, its principle place of business is 10176 Corporate Square Drive, Suite 240 St. Louis, MO 63132.

9. Defendant Clayton Logomasini (hereinafter "Logomasini") is a principle of Defendant
8
Naviss, a corporation which is the alter ego or business conduit of a Defendant Logomasini
9
and Chrisco. Upon information and belief, Logomasini is a resident of the State of Missouri.
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He may be served with process by serving him at 671 Clifton Drive Weldon Spring, MO.
11
63304.

13
10. Defendant Jason Chrisco (hereinafter "Chrisco") is a principle of Defendant Naviss, a
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corporation which is the alter ego or business conduit of a Defendant Logomasini and
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Chrisco. Upon information and belief, Chrisco is a resident of the State of Missouri. He may
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be served with process by serving him at 2 Robert Johns Way, St. Charles, MO 63303.
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III.
JURISDICTION AND VENUE

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11. This Court has jurisdiction over the subject matter jurisdiction of their action pursuant to
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28 U.S.C. § 1331.

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12. This Court has jurisdiction over Defendant National Recall & Data Services, Inc., a
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corporation that operated within the class period in the State of Texas, doing business in
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Texas, registering as a Foreign For-Profit Corporation. FEIN 46077727, providing the
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following Texas business address: 5606 S.P.I.D., Suite D PMB 294, Corpus Christi, TX.

1 78412. The certificate of registration was forfeited on February 20, 2015.
2

3 13. This Court has jurisdiction over Defendant Charles Holley an individual operating in the
4 State of Texas, doing business in Texas.
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6 14. Defendant Naviss, LLC, is a Missouri limited liability company authorized to do business in
7 Texas, operating in the State of Texas, doing business in Texas.
8

9 15. Defendant Clayton Logomasini and Defendant Jason Chrisco are principles of Defendant
10 Naviss, a Missouri limited liability company authorized to do business in Texas, operating
11 in the State of Texas, doing business in Texas.
12

13 16. Plaintiffs are citizens and residents of Dallas County, Texas, and asserts and claims on
14 behalf of a proposed class whose members are domiciled throughout the fifty states and
15 the U.S. territories. There is minimal diversity of citizenship between proposed Class
16 Members and Defendants.
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18 17. This court has Federal question jurisdiction as the complaint alleges violations of the
19 following:
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21 a) Violations of the Driver's Privacy Protection Act, 18 U.S.C. §2721, et. seq.
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23 18. Subject-matter jurisdiction exists in this Court related to their action pursuant to 28 U.S.C.
24 § 1332. The aggregate claims of Plaintiffs and the proposed Class Members exceed the
25 sum or value of \$5,000,000.00.
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27 19. Venue is proper in their District, and vests jurisdiction in the State of Texas and Federal
28 Courts in their district, under 28 U.S.C. §1391(b) and (c) against Defendants. A substantial
portion of the events and conduct giving rise to the violations of law complained of herein
occurred within their state, and within their district. Thus, mandatory jurisdiction in their
U.S. District Court vests for any Class Member, wherever they reside, which occurred

1 within the United States. The application of the law should be applied to any Class
2 Member, made the basis of their action, anywhere within the United States, as if any and
3 all activity occurred entirely in Texas and to a Texas resident. Thus, citizens and residents
4 of all states are Class Members, for all purposes related to this instant Complaint, similarly
5 situated with respect to their rights and claims as Texas residents, and therefore are
6 appropriately included as Class Members, regardless of their residency, or wherever the
7 activity occurred made the basis of their action.

8
9 20. Minimal diversity of citizenship exists in their action, providing jurisdiction as proper in the
10 Court, since Defendants conducted activity within their state and in their district during
11 the class period, and Plaintiffs include citizens and residents of their state and district, and
12 assert claims on behalf of a proposed class whose members are scattered throughout the
13 fifty states and the U.S. territories; thus there is minimal diversity of citizenship between
14 proposed Class Members and the Defendants.

15
16 21. This is the judicial district wherein the basis of the conduct complained of herein involving
17 the Defendants was implemented, in whole or part. Motor vehicle records were obtained
18 from their state and used within the state and district; therefore, evidence of conduct as
19 alleged in their complaint is located in their judicial district.

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23 IV.

24 **DRIVER'S PRIVACY PROTECTION ACT 18 U.S.C. §2721 et seq.**

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26 22. With the advancement of information technology in the 1980's a threat to privacy arose
27 from the nonconsensual dissemination of personal information, and Congress sought to
28 regulate particular private sectors. The highly publicized 1989 murder of actress Rebecca
Schaeffer brought to light the potential threat to privacy and safety posed by their

1 commerce in motor vehicle record information. Schaeffer had taken pains to ensure that
2 her address and phone number were not publicly listed. Despite those precautions, a
3 stalker was able to obtain her home address through her state motor vehicle records.
4 Evidence gathered by Congress revealed that the incident involving Rebecca Schaeffer
5 was similar to many other crimes in which stalkers, robbers, and assailants had used state
6 motor vehicle records to locate, threaten, and harm victims. Based on evidence about
7 threats to individuals' privacy and safety from misuse of personal information in state
8 motor vehicle records, Congress enacted the DPPA to restrict the disclosure of personal
9 information in such records without the consent of the individual to whom the
10 information pertains.

13 23. To protect the privacy and safety of licensed drivers, and to limit misuse of the
14 information contained in these government record systems, Congress enacted the
15 Driver's Privacy Protection Act of 1994, 18 U.S.C. §§2721-2725. The Act imposed strict
16 rules for collecting the personal information in driver records, and provided for liability in
17 cases where an individual or corporation improperly collects, discloses, uses, or sells such
18 records. Congress paid particular attention to differences between motor vehicle records
19 and other public records containing similar information, which it decided not to regulate.
20 One concern that motivated enactment of the DPPA was that personal information in
21 motor vehicle records, including names and addresses, is associated with license plate
22 numbers, which drivers must display to the general public:
23
24

26 "Unlike with license plate numbers, people concerned about privacy can usually take
27 reasonable steps to withhold their names and address[es] from strangers, and their limit
28 their access to personal identifiable information" in other records".

140 Cong. Rec. H2523 (daily ed. Apr. 20, 1994) (statement of Rep. Edwards); *ibid.*

1 (statement of Rep. Moran).

2 24. Congressional testimony in 1993 highlighted potential threats to privacy and personal
3 safety from disclosure of personal information held in state DMV records. Representative
4 Moran noted in part:

5 "Balancing the interests of public disclosure with an individual's right to privacy is
6 delicate, but essential, task for government. The Driver Privacy Protection Act (H.R.
7 3365), which I introduced last week, safeguards the privacy of drivers and vehicle
8 owners by prohibiting the release of personal information—including a person's
9 name and address—to anyone without a specific business-related reason for
10 obtaining the information. Their bill by itself will not stop stalking. But it will stop
State government from being an accomplice to the crime".

11 LEGISLATION TO PROTECT PRIVACY AND SAFETY OF LICENSED DRIVERS—H.R. 3365
12 (Extension of Remarks- November 03, 1993) [Page: E2747]," HON. JAMES P. MORAN in the
13 House of Representatives, WEDNESDAY, NOVEMBER 3, 1993, (last accessed September 27,
14 2013).

15 25. The testimony before Congress also discussed concerns that the personal information
16 contained in state DMV records had considerable commercial value. In particular, the
17 personal information sold by state DMVs were being used extensively at that time to
18 support the direct-marketing efforts of businesses. See 1994 WL 212836 (Feb. 3, 1994)
19 (statement of Richard A. Barton, Direct Marketing Association) ("The names and
20 addresses of vehicle owners, in combination with information about the vehicles they
21 own, are absolutely essential to the marketing efforts of the nation's automotive
22 industry."). Personal information in DMV records "is combined with information from
23 other sources and used to create lists for selective marketing use by businesses, charities,
24 and political candidates." 140 Cong. Rec. H2522 (daily ed. Apr. 20, 1994) (statement of
25 Rep. Moran) ("Marketers use DMV lists to do targeted mailings and other types of
26 marketing.").

1 26. Professor Mary Culnan testified that privacy concerns about the use of information "are
2 especially likely to arise when the reuse is not compatible with the original purpose for
3 collecting the information," since in such circumstances "the prospect of
4 misinterpretation or crass exploitation usually follows." 1994 WL 212834 (Feb. 3, 1994)
5 (citation omitted). Professor Culnan further explained:
6

7 "DMV information is not collected voluntarily. Few people can survive without a
8 driver[']s license or an automobile, and a condition of having either is to register with the
9 state. By providing their information to marketers without providing an opt-out to its
10 citizens, the state is essentially requiring people to participate in direct marketing absent
11 any compelling public safety argument. This is in direct contrast to most of the other
12 mailing lists based on private sector data, such as a list of subscribers to a particular
13 magazine. The people on these lists have indicated an interest in participating in direct
marketing because they have "raised their hands" in the marketplace by voluntarily
responding to a commercial offer of some type. No such claim may be made for all licensed
drivers and registered automobile owner[s]."

14 27. Due to the concerns regarding the improper uses of motor vehicle records by the
15 marketing industry, the DPPA, initially enacted in 1994, was amended in 1999 to change
16 the law to eliminate the practice of selling personal information. Senator Shelby, the
17 principal sponsor, warned against "unrelated secondary uses" of motor vehicle
18 information without prior approval (i.e., for commercial sale in the open market), when
19 the records have been obtained only for the purpose of vehicle registration. Senator
20 Shelby underlined that the purpose of the DPPA was to ensure that individuals must
21 "grant their consent" before the state or a third party can sell or release highly restricted
22 personal information "when it is to be used for the purpose of direct marketing,
23 solicitations, or *individual look-up*." 4 Hrg. Before the Subcomm. on Transp. of the S.
24 Comm on Appropriations, 106th Cong. (2000) (statement of Sen. Shelby, Sponsor),
25 available at 2000 WL 374404.

1 28. The “opt-out” provisions of the original version of the DPPA was changed to “opt-in”
2 provisions in §§2721(b)(11) and (12) by the October 1999 amendments to the DPPA. See
3 Pub. L. No. 106-69, 113 Stat. 986 (Oct. 9, 1999). Personal information in motor vehicle
4 records could now be disclosed in certain circumstances for bulk distribution for surveys,
5 marketing, or solicitation, but only if individuals are provided an opportunity, in a clear
6 and conspicuous manner, to block such use of information pertaining to them. 18 U.S.C.
7 §2721(b)(12).

8 29. The DPPA defines “personal information” as “information that identifies an individual,
9 including an individual’s photograph, social security number, driver identification number,
10 name address (but not the five (5) digit zip code), telephone number, and medical or
11 disability information, but does not include information on vehicular accidents, driving
12 violations, and driver’s status.” 18 U.S.C. §2725(3). “[M]otor vehicle record” is defined as
13 “any record that pertains to a motor vehicle operator’s permit, motor vehicle title, motor
14 vehicle registration, or identification card issued by a department of motor vehicles.” 18
15 U.S.C. §2725(1). The DPPA’s general prohibition on disclosure of personal information is
16 subject to fourteen (14) exceptions—the permissible purposes—which allow for the
17 limited disclosure of personal information.

18 30. The 14 permitted uses of DMV data are designed to “strik[e] a critical balance between an
19 individual’s fundamental right to privacy and safety and the legitimate governmental and
20 business needs for th[e] information.” 140 Cong. Rec. 7925 (1994) (remarks of Rep.
21 Moran). The DPPA never explicitly lists any prohibited uses; rather, it generally prohibits
22 all but the fourteen permissible uses enumerated in section 2721(b). The fourteen
23 permissible uses under the DPPA are:

1 (1) For use by any government agency, including any court or law enforcement
2 agency, in carrying out its functions, or any private person or entity acting on behalf
3 of a Federal, State, or local agency in carrying out its functions.

4 (2) For use in connection with matters of motor vehicle or driver safety and theft;
5 motor vehicle emissions; motor vehicle product alterations, recalls, or advisories;
6 performance monitoring of motor vehicles, motor vehicle parts and dealers; motor
7 vehicle market research activities, including survey research; and removal of non-
8 owner records from the original Owner records of motor vehicle manufacturers.

9 (3) For use in the normal course of business by a legitimate business or its agents,
10 employees, or contractors, but only-

11 (A) to verify the accuracy of personal information submitted by the individual to
12 the business or its agents, employees, or contractors; and

13 (B) if such information as so submitted is not correct or is no longer correct, to
14 obtain the correct information, but only for the purposes of preventing fraud by,
15 pursuing legal remedies against, or recovering on a debt or security interest
16 against, the individual

17 (4) For use in connection with any civil, criminal, administrative, or arbitral
18 proceeding in any Federal, State, or local court or agency or before any self-
19 regulatory body, including the service of process, investigation in anticipation of
20 litigation, and the execution or enforcement of judgments and orders, or pursuant to
21 an order of a Federal, State, or local court.

22 (5) For use in research activities, and for use in producing statistical reports, so long
23 as the personal information is not published, re-disclosed, or used to contact
24 individuals.

25 (6) For use by any insurer or insurance support organization, or by a self-insured
26 entity, or its agents, employees, or contractors, in connection with claimed
27 investigation activities, antifraud activities, rating or underwriting.

28 (7) For use in providing notice to the owners of towed or impounded vehicles.

29 (8) For use by any licensed private investigative agency or licensed security service for
30 any purpose permitted under their subsection.

31 (9) For use by an employer or its agent or insurer to obtain or verify information
32 relating to a holder of a commercial driver's license that is required under chapter
33 313 of title 49.

34 (10) For use in connection with the operation of private toll transportation facilities.

1 (11) For any other use in response to requests for individual motor vehicle records if
2 the State has obtained the express consent of the person to whom such personal
3 information pertains.

4 (12) For bulk distribution for surveys, marketing or solicitations if the State has
5 obtained the express consent of the person to whom such personal information
6 pertains.

7 (13) For use by any requester, if the requester demonstrates it has obtained the
8 written consent of the individual to whom the information pertains.

9 (14) For any other use specifically authorized under the law of the State that holds
10 the record, if such use is related to the operation of a motor vehicle or public safety.
11 18 U.S.C. §2721(b).

12 31. Sections 2721(a) and 2722(a) make nondisclosure of personal information the default
13 rule. See 18 U.S.C. § 2721(a) ("In general" prohibiting disclosure of personal information
14 "except as provided in subsection (b)"); 18 U.S.C. § 2722(a) ("It shall be unlawful for any
15 person knowingly to obtain or disclose personal information . . . for any use not permitted
16 under section 2721(b) of their title."). Section 2721(b) then lists fourteen discrete
17 exceptions to non-disclosure.

18 32. According to section 2721(c), "[a]n authorized recipient of personal information (except a
19 recipient under subsection (b)(11) or (12)) may resell or re-disclose the information only
20 for a use permitted under subsection (b) (but not for uses under subsection (b)(11) or
21 (12)). An Authorized Recipient under (b)(11) may resell or re-disclose personal
22 information for any purpose. An Authorized Recipient under section (b)(12) may resell or
23 re-disclose personal information pursuant to subsection (b)(12)." 18 U.S.C. § 2721(c).

24 33. Any person who receives personal information from a DMV and resells or further discloses
25 that information must, for five (5) years, maintain records identifying each person or
26 entity to whom a further resale or re-disclosure was made, and the permitted purpose for
27
28

1 such resale or re-disclosure. See 18 U.S.C. 2721(c) (fourth sentence) (1994 & Supp. III
2 1997).

3 34. The DPPA creates a private right of action for “the individual” whose personal information
4 was knowingly obtained, disclosed, or used “for a purpose not permitted” under section
5 2721(b). 18 U.S.C. § 2724(a). “It shall be unlawful for any person knowingly to obtain or
6 disclose personal information . . . for *any* use not permitted under section 2721(b) of their
7 title.” 18 U.S.C. § 2722(a).

8 35. The DPPA expressly provides for liquidated damages independent of showing actual
9 damages, where all damages are subject to the Court’s discretion. The remedy for a
10 violation of the DPPA is unambiguous under the plain terms of the statute. In *Kehoe v.*
11 *Federal Bank & Trust*, the Eleventh Circuit held, based on the unambiguous language of
12 the DPPA, which actual damages are not necessary in order to recover under the
13 liquidated damages provision of the DPPA. 421 F.3d 1209, 1212 (11th Cir. 2005) (citing
14 *Doe v. Chao*, 540 U.S. 614 (2004)). The DPPA remedies are as follows:

15 (b) Remedies.--The court *may* award--
16 (1) Actual damages, but not less than liquidated damages in the amount of \$2,500;
17 (2) Punitive damages upon proof of willful or reckless disregard of the law;
18 (3) Reasonable attorneys’ fees and other litigation costs reasonably incurred; and
19 (4) Such other preliminary and equitable relief as the court determines to be
20 appropriate.

21 36. The Congressional record is clear: the core of the DPPA is to prevent the unauthorized
22 obtainment of a citizen’s personal information and the statute creates a tangible right to
23 have one’s information secure. The violation of that security is a harm that supports
24 standing.

25 **PLAINTIFF’S OCCURRENCES, HARM, AND STANDING**

1 **A. PLAINTIFF'S OCCURRENCES**

2 37. Plaintiffs ("Plaintiffs") are United States residents. Class Members are United States
3 residents that experienced the same occurrences as Plaintiffs:

4 a. Plaintiffs registered a motor vehicle with the State Motor Vehicle Department
5 within their state during the Class Period. Plaintiffs were legally obligated to
6 provide personal and sensitive identifying information within the motor vehicle
7 information provided to the State Motor Vehicle Department for purposes
8 required by law in order to be legally able to operate their vehicle within their
9 state, an obligation that did not require the release of such to any individual or
10 corporation that did not possess legal rights to access their motor vehicle
11 records;

12 b. Plaintiff's motor vehicle records were obtained by Defendant National Recall &
13 Data Services Inc. and Defendant Charles Holley for impermissible DPPA
14 purposes, without notice or express consent of the Plaintiffs;

15 c. Plaintiffs was unaware that Defendant National Recall & Data Services Inc. and
16 Defendant Charles Holley would obtain, re-disclose and/or resell their motor
17 vehicle records for impermissible DPPA purposes. Plaintiffs could not have
18 learned about Defendant National Recall & Data Services Inc. and Defendant
19 Charles Holley's access to their motor vehicle records except through
20 unreasonably burdensome efforts, such as those required in the investigation
21 underlying these allegations;

22 d. Plaintiffs had Defendant National Recall & Data Services Inc. and Defendant
23 Charles Holley re-disclose and/or re-sell their motor vehicle records,

intentionally, or in the alternative, negligently, to National Affiliates, including but not limited to, Defendant Naviss, for impermissible DPPA purposes;

- e. Plaintiffs had National Affiliates, including but not limited to, Defendant Naviss, obtain their motor vehicle records from Defendant National Recall & Data Services Inc. and Defendant Charles Holley, knowing the source of the Plaintiff's motor vehicle records was the State Motor Vehicle Department, for impermissible DPPA purposes;
- f. Plaintiffs had Defendant National Affiliates, including but not limited to, Defendant Naviss, use their motor vehicle records, in whole or part, for purposes which included direct marketing;
- g. Plaintiffs received a direct marketing letter from "Vehicle Administration Center", an entity owned and operated by Defendant Naviss, using data derived, in whole or part, from Plaintiffs and Class Members' motor vehicle records obtained by Defendant National Recall & Data Services Inc. and Defendant Charles Holley;
- h. Plaintiffs became the victims of privacy and security violations due to Defendants' unauthorized access to, and use of, their motor vehicle records, suffering harm, and seek monetary and injunctive redress.
- i. Plaintiffs require permanent injunctive relief because Defendant's violation of the DPPA is ongoing and, without the Court's intervention, will continue even if the Court were to award a money judgment for past instances of DPPA violations to Plaintiffs, but will do nothing to protect Plaintiff's rights going forward.

1 **B. PLAINTIFF'S HARM**

2 38. Plaintiffs has suffered an Injury In Fact-that was “concrete and particularized”, and
3 “actual or imminent, not conjectural or hypothetical.” as a result of the
4 Defendant’s unauthorized obtainment, re-disclosure, and/or resale of Plaintiff’s
5 motor vehicle records, obtained without express consent, from state motor
6 vehicle departments for uses that included direct marketing, a violation of the
7 Driver’s Privacy Protection Act, 18 U.S.C. §2721 et seq., Defendants, individually
8 and collectively, caused Plaintiffs “Tangible” and “Intangible” harms, including but
9 not limited to, the following:

10 **1. Violation of the Driver’s Privacy Protection Act, 18 U.S.C. §2721 et seq.**

11 39. Plaintiffs suffered an injury in fact because Defendants violated a “legally protected
12 privacy interest”, protected by the Driver’s Privacy Protection Act, 18 U.S.C. §2721 et
13 seq., resulting in an Injury-In-Fact-that was “concrete and particularized”, and “actual or
14 imminent, not conjectural or hypothetical, resulting in tangible and intangible harms
15 mentioned herein. Plaintiff’s injury in fact was due to the taking, and public disclosure
16 of Personal Identifying Information contained within Plaintiff’s motor vehicle records.
17 The private affairs of the Plaintiffs include the contents of their motor vehicle records.
18 Their information is especially private because it reveals an individual’s name, address,
19 and their motor vehicle information, which should not be publicly disclosed such
20 information that reasonable people ordinarily understand to be private, as well as in
21 intrusion into their private matters. Plaintiff’s motor vehicle records are not a matter of
22 legitimate public concern. Therefore, Defendants surreptitiously obtaining Plaintiff’s
23 private motor vehicle records held by State Department of Motor Vehicle Departments

1 for purposes that include direct marketing is, and will continue to be, regarded as highly
2 offensive and objectionable and a violation of the Driver's Privacy Protection Act, 18
3 U.S.C. §2721 et seq., due to one (1) or more of the following acts:
4

- 5 a. Obtainment of Plaintiff's and Class Members' Motor Vehicle Records
6 from State Motor Vehicle Departments, without their express
7 consent, for purposes that violated the Driver's Privacy Protection Act
8 (hereinafter referred to as "DPPA");
9
- 10 b. Re-disclosure, directly or indirectly, Plaintiff's and Class Members'
11 MVRs, without their express consent, for purposes that violated the
12 DPPA; and
13
- 14 c. Re-sale, directly or indirectly, Plaintiff's and Class Members' MVRs,
15 without their express consent, for purposes that violated the DPPA.
16

17 **2. Informational Injury**

18 40. Plaintiffs suffered an injury in fact because Defendants failed to provide information
19 as required including, but not limited to, the following:
20

21 a. Defendant National Recall & Data Services Inc. and Defendant Charles Holley had
22 a legal obligation to inform the State Department of Motor Vehicles and Plaintiffs
23 that the motor vehicle records it was obtaining would be used, directly or
24 indirectly, for direct marketing. The failure to provide their information injured
25 Plaintiffs;
26

27 b. Defendant National Recall & Data Services Inc. and Defendant Charles Holley had
28 a legal obligation to inform the State Department of Motor Vehicles and
Plaintiffs that the motor vehicle records it was obtaining would be re-disclosed
and/or re-sold, directly or indirectly, to Defendant National Affiliates, entities
known to be in the direct marketing business. The failure to provide their

1 information injured Plaintiffs;

2 c. Defendant National Recall & Data Services Inc. and Defendant Charles Holley had
3 a legal obligation to inform the State Department of Motor Vehicles and
4 Plaintiffs that the motor vehicle records it had obtained and re-disclosed and/or
5 resold was being used for acts which violated the DPPA:
6

7 "The Purchaser shall immediately inform the State if privacy protected
8 personal information provided to the purchaser is disclosed in violation of
9 the DPPAs. Their obligation applies whether the disclosure was by the
10 Purchaser or a person or entity that acquired privacy protected
11 information from the Purchaser, directly or indirectly".
12

13 The failure to provide their information injured Plaintiffs;

14 d. Defendant National Recall & Data Services Inc. and Defendant Charles
15 Holley had a legal obligation requiring notice to the Plaintiffs, and all
16 affected individuals, pertaining to the unauthorized use of the motor
17 vehicle records it provided to Defendant National Affiliates which were
18 used for direct marketing, without the Plaintiffs express consent. Such
19 notice should have been done in the most expedient time possible and
20 without unreasonable delay. Defendant National Recall & Data Services
21 Inc. and Defendant Charles Holley compounded their information injury,
22 an injury that continues to date, failing to notify Defendant National
23 Affiliates to cease use of the motor vehicle records; moreover, failing to
24 notify Plaintiffs that [their] motor vehicle records were being used
25 improperly, the failure of such notice resulted in harm. The failure to
26 provide their information injured Plaintiffs.
27
28

3. Lost Time, Money, and Resources

1 41. Plaintiffs suffered an injury in fact because Defendants made the Plaintiffs lose time,
2 money, and resources including, but not limited to, the following:

3 a. Plaintiffs expended [their] time, money, and resources to provide the motor
4 vehicle record information to State Motor Vehicle Departments, an obligation
5 required by law. Plaintiffs expended [their] time, money, and resources with the
6 understanding that such information would only be used for permissible
7 purposes. Defendants obtained [their] motor vehicle record information [he]
8 provide[d] to the State Motor Vehicle Departments for impermissible uses,
9 negating Plaintiff's expenditure of [their] time, money, and resources;
10 b. Plaintiffs lost [their] time, money, and resources involving the receipt of the
11 unauthorized and unwarranted offers, Defendant National Affiliates' Direct
12 Marketing letters, an intrusion upon and occupation of the Plaintiff's property. These
13 unwarranted offers wasted [their] time, money, and resources, IE, by depleting
14 limited time for Plaintiffs to obtain, open, read, comprehend the letters, and handling
15 such accordingly, an interruption and distraction.

16 4. **Identity Theft, and Risk of Future Identity Theft, Fraud, and Swindles**

17 42. Plaintiffs suffered an injury in fact because Defendants unauthorized obtainment, re-
18 disclosure, and re-sale of [their] motor vehicle record resulted in Identity Theft;
19 moreover, such also created a risk of future identity theft, fraud, and swindles which
20 amounts to a material risk of harm, concrete and particularized, imminent, and
21 certainly impending. Courts have held that "the risk that Plaintiff's personal data will
22 be misused by ... hackers ... is immediate and very real." *In re Adobe Sys., Inc. Privacy*
23 *Litig.*, 66 F. Supp. 3d 1197, 1214 (N.D. Cal. 2014). In *Remijas v. Neiman Marcus Group*,

1 LLC, 794 F.3d 688 (7th Cir. 2015), the risk of identity theft was sufficient to confer
2 Article III standing because Plaintiffs alleged that data servers had already been
3 breached. Id. at 694. That “threatened harm” therefore “is sufficiently concrete and
4 imminent” to satisfy Article III standing.
5

6 **5. Security Risk**

7 43. Plaintiffs suffered an injury in fact because Defendants’ unlawful disclosures created
8 a material risk, a security risk of bodily injury and harm, if the personal information
9 inherent within the motor vehicle records, including but not limited to, the Plaintiff’s
10 name and address was re-disclosed, intentionally or negligently, to persons that
11 would do harm to the Plaintiffs and their family. The *Spokeo* Court specifically stated
12 that “the risk of real harm” can “satisfy the requirement of concreteness.” *Spokeo*,
13 136 S. Ct. at 1549. Their security risk, an attributing factor for enactment of the DPPA
14 in 1994, and amendment in 2000, poses a material risk of harm, actual, imminent,
15 and certainly impending for Plaintiffs and their family.
16

17 **C. PLAINTIFF’S STANDING**

18 44. To establish Article III, § 2. Standing, a doctrine rooted in the U.S. Constitution’s “case
19 or controversy” requirement, Plaintiffs must demonstrate (1) an injury-in-fact that was
20 “concrete and particularized”, and “actual or imminent, not conjectural or
21 hypothetical.”, (2) fairly traceable to the defendants’ actions, (3) that is likely to be
22 redressed by a favorable decision. Plaintiffs have satisfied all three (3) requirements,
23 resulting in the aforementioned tangible and intangible harms.
24

25 45. The U.S. Supreme Court’s recent opinion reaffirmed in *Spokeo* that ‘Intangible’
26
27

Injuries are “Concrete” for Purposes of Article III 2. Standing where Congress Codified
Established Common Law Rights, as Here, Codifying the Driver’s Privacy Protection
Act, 18 U.S.C. §2721, et. seq. *Spokeo*, reaffirmed the fundamental—and
uncontroversial—principle that to establish injury-in-fact under Article III a Plaintiffs
must allege “an injury that is both ‘concrete *and* particularized.’” *Spokeo*, 136 S. Ct. at
1545 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*,
528 U.S. 167, 180-181 (2000)) (emphasis in original). After clarifying that the
“concrete” and “particularized” inquiries must be conducted separately, the Court
affirmed the long-standing principle that a concrete injury can be either tangible, such
as monetary loss, or *intangible*, such as a violation of one’s free speech or free
exercise rights. *Id.* at 1549 (citing *Pleasant Grove City v. Summum*, 555 U.S. 460 (2009)
(free speech); *Church of Lukumi Babalu Aye, Inc. v. Hialeah*, 508 U.S. 520 (1993) (free
exercise)).

I. Injury In Fact—that was “concrete and particularized”, and “actual or imminent, not conjectural or hypothetical.”

a. Plaintiff’s Injuries are “Concrete”, not merely a “Bare Procedural Violation”

46. To establish the initial standard of the first element –injury in fact- Plaintiffs has
satisfied the “Concreteness” requirement because The Supreme Court’s
reaffirmed in *Spokeo* that violations of a statute protecting against “intangible”
harm *can* constitute “concrete” injuries sufficient to confer Article III standing,
without the need to show any further harm. 136 S. Ct. 1540, 1549 (2016). Where,
as here, the interests protected by a statute have a “close relationship” to rights
rooted in the common law, or where Congress has “elevate[d]” certain rights “to

1 the status of legally cognizable injuries," violations of those interests amount to
2 injury-in-fact. *Id.* In other words, a Plaintiffs in such a case **need not** allege any
3 *additional* harm beyond the one Congress has identified." *Id.* (emphasis added).

4 47. The Supreme Court, in evaluating whether an intangible injury is sufficiently "concrete"
5 to satisfy the injury-in-fact requirement, identified two important factors: the history
6 and the judgment of Congress, providing the following instructions to Courts: "it is
7 instructive to consider whether an alleged intangible harm has a close relationship to a
8 harm that has traditionally been regarded as providing a basis for a lawsuit in English or
9 American courts." *Spokeo*, 136 S. Ct. at 1549. 'Private rights' have traditionally included
10 rights of *personal security*, property rights, and contract rights." *Id.* (emphasis added)
11 (citing 1 W. Blackstone, *Commentaries* at *130-139). Injury to personal privacy has long
12 provided a basis for suit in American courts. See Restatement (Second) of Torts §652A
13 cmt. a (1977) (noting that "the existence of a right of privacy is now recognized in the
14 great majority of American jurisdictions"); *Pavesich v. New England Life Ins. Co.*, 50 S.E.
15 68, 70 (Ga. 1905) ("A right of privacy . . . is therefore derived from natural law. Their
16 idea is embraced in the Roman's conception of justice . . .); Samuel D. Warren & Louis
17 D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193, 198 (1890) (noting that "the
18 common-law right to intellectual and artistic property are . . . but instances and
19 applications of a general right to privacy.")

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21
22
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25
26 **1. Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq. Codifies "Concrete"**
27 **Privacy Injuries that are Historically Recognized in Common Law**
28

48. The history of common law rights to privacy and the judgment of Congress, explicitly

1 contemplated in the legislative histories of the respective statutes, resulted in the
2 enactment of the Driver's Privacy Protection Act, 18 U.S.C. §2721 et seq. to protect an
3 individual's right to personal privacy and security, which traditionally provided a basis
4 for a lawsuit at common law. Far from being a "Bare Procedural Violation", Defendant's
5 conduct is the core harm contemplated that the DPPA guards against.
6

7 49. The DPPA expressly protects and codifies fundamental privacy rights that are rooted in
8 history and the common law. Sections 2721(a) and 2722(a) make nondisclosure of
9 personal information the default rule. See 18 U.S.C. § 2721(a) ("In general" prohibiting
10 disclosure of personal information "except as provided in subsection (b)"); 18 U.S.C. §
11 2722(a) ("It shall be unlawful for any person knowingly to obtain or disclose personal
12 information . . . for any use not permitted under section 2721(b) of their title."). Section
13 2721(b) then lists fourteen discrete exceptions to non-disclosure; furthermore,
14 according to section 2721(c), [a]n "authorized" recipient of personal information (except
15 a recipient under subsection (b)(11) or (12)) may resell or re-disclose the information
16 only for a use permitted under subsection (b) (but not for uses under subsection (b)(11)
17 or (12)). An Authorized Recipient under (b)(11) may resell or re-disclose personal
18 information for any purpose. An Authorized Recipient under section (b)(12) may resell
19 or re-disclose personal information pursuant to subsection (b)(12)." 18 U.S.C. § 2721(c).
20 As such, the DPPA is a codification of well-established common law rights of privacy.
21

22 50. In enacting the DPPA, Congress recognized that it was codifying claims rooted in the
23 common law: "[T]he right of privacy, the right to be left alone, and the right against
24 unreasonable searches and seizures—the right, that is, to be personally secure—are
25 among the most highly valued rights of an American citizen. These guarantees have
26

been a part of Anglo-Saxon law ever since the 15th century.” 114 Cong. Rec. S6194 (daily ed. May 23, 1968) (statement of Sen. Fong). Thus, there can be no doubt that the unauthorized access to Plaintiff’s motor vehicle records for purposes that included direct marketing without prior consent— codified as unlawful by DPPA—amounts to a “concrete” injury that bears, at a minimum, a “close relationship” to the common law’s steadfast protection of one’s fundamental right of privacy.

51. The DPPA creates for Plaintiff[s] a specific, enforceable legal right, derived from common law, to expect Defendants to not gain access to [their] identifying information ...contained within motor vehicle records held by State Department of Motor Vehicles [and] its violation constitutes a concrete, particularized deprivation. Defendants violated the statute by obtaining, re-disclosing and/or re-selling Plaintiffs[s'] personal information, and it deprived Plaintiffs[s] of a right to which [they] [were] particularly entitled by law, constituting an injury-in-fact, acts sufficient to confer Article III, § 2. Standing.

2. The U.S. Congress Recognized a “Concrete” Harm Related to the Unauthorized Obtainment, Re-disclosure, and Re-sale of Motor Vehicle Records Obtained from State Motor Vehicle Departments By Enacting The Driver’s Privacy Protection Act, 18 U.S.C. §2721 et seq.

52. The “judgment of Congress”—which is both “instructive and important”—also confirms that the claims here satisfy Article III. *Spokeo*, 136 S. Ct. at 1549. The legislative history of DPPA makes clear it was intended to recognize and codify the concrete harm that results from having a third party obtain, re-disclose, and/or re-sell their motor vehicle records, without express consent, for purposes that included direct marketing. The DPPA was initially passed in 1994 as part of Title XXX of the Violent Crime Control and

1 Law Enforcement Act to govern the privacy and disclosure of personal information
2 gathered by State Departments of Motor Vehicles. In recommending DPPA's passage,
3 Representative Edwards remarked:
4

5 "Unlike with license plate numbers, people concerned about privacy can usually
6 take reasonable steps to withhold their names and address[es] from strangers,
7 and their limit their access to personal identifiable information" in other records".
8

9 140 Cong. Rec. H2523 (daily ed. Apr. 20, 1994) (statement of Rep. Edwards); ibid.
10 (statement of Rep. Moran), (emphasis added).

11 b) The Fifth Circuit has also uniformly recognized the Congressional intent of the DPPA:
12

13 "Congress originally passed it (as an amendment to the Crime Control and Law
14 Enforcement Act of 1994) in response to the murder of actress Rebecca Schaeffer at the
hands of a stalker. 140 CONG. REC. H2518-01, H2526 (1994) (Statement of Rep. Goss).
15 Their stalker used DMV records to find Schaeffer's unlisted home address. Id. The
16 legislative history reflects the concern for victims of crimes committed using DMV
17 records.", *Taylor v. Acxiom Corp.*, No. 2:07cv0001, 2008 U.S. Dist. LEXIS 115940 (E.D.
18 Tex. Sept. 9, 2008), aff'd, 612 F.3d 325 (5th Cir. 2010).

19 c) In enacting the DPPA Congress's unmistakable intent was to create an express legal
20 right prohibiting the "unauthorized access" to personal information contained within
21 motor vehicle records held by the State Motor Vehicle Departments. That privacy
22 invasion is the precise concrete injury Plaintiffs alleges here, acts sufficient to confer
23 Article III Standing.

24 **b. Injury-In-Fact- "Particularized" Requirement**

25 53. To establish the secondary standard of the first element –injury in fact- Plaintiffs have
26 satisfied the "Particularized" requirement because it affected the Plaintiffs in a
27 personal and *individual* manner, an injury suffered in particular, and not one suffered
28 by a third party or a "generalized grievance shared in substantially equal measure by
all or a large class of citizens," *Warth v. Seldin*, 422 U.S. 490, 499 (1975). The

1 Defendants violated *their* statutory rights, not just the statutory rights of other people,
2 and *their* personal interests in the privacy of *their* motor vehicle records are
3 individualized rather than collective. The Plaintiffs did not provide *their* express
4 consent to permit Defendants access to *their* motor vehicle records; furthermore,
5 Defendants obtained, re-disclosed, and/or resold *their individual* motor vehicle
6 records, while the direct marketing letters were sent to *their individual* residences.
7

8 **c. Injury-In-Fact- “actual or imminent, not conjectural or hypothetical.”**
9 **Requirement**

10 54. To establish the secondary standard of the first element –injury in fact- Plaintiffs have
11 satisfied the injury was actual or imminent, not conjectural or hypothetical because
12 Defendant’s actions had already occurred, IE, Defendant National Recall & Data
13 Services Inc. and Defendant Charles Holley had already obtained Plaintiff’s motor
14 vehicle records from State Motor Vehicle Departments without a DPPA permissible
15 use, had re-disclosed and/or re-sold Plaintiff’s motor vehicle records to Defendant
16 National Affiliates had actually sent direct marketing letters to Plaintiffs, and it had
17 affected the Plaintiffs. Such acts were actual, while other acts noted below were
18 imminent, and both were not “conjectural or hypothetical.”
19

20 **II. Injury-In-Fact- fairly traceable to the defendants’ actions**
21

23 55. To establish the standard of the second element –injury in fact-fairly traceable to the
24 defendants’ actions, - Plaintiffs have satisfied their requirement because the
25 Defendant’s actions made the basis of their action, revealed by a “covert”
26 investigation conducted by the Texas Department of Motor Vehicles, showed
27 unequivocally that Defendant National Recall & Data Services Inc., and Defendant
28

1 Charles Holley, in concert with Defendant National Affiliates had violated the DPPA.
2 Defendant National Recall & Data Services Inc., and Defendant Charles Holley,
3 entered into a purchase agreement with the Texas Department of Motor Vehicles to
4 obtain the Texas Motor Vehicle Registration database on a continuous and repeated
5 basis. The Texas Department of Motor Vehicles “seeded” the motor vehicle records
6 sold to Defendant National Recall & Data Services Inc. and Defendant Charles Holley.
7 The identical “seeded” data was incorporated into direct marketing letters sent by
8 Defendant National Affiliates to State Officials; furthermore, Defendant National
9 Recall & Data Services Inc. and Defendant Charles Holley, failed in their duty as a re-
10 seller of the motor vehicle records obtained from State Motor Vehicle Departments
11 to confirm the DPPA permissible uses of Defendant National Affiliates.
12
13
14
15

III. Injury In Fact-that is likely to be redressed by a favorable decision

16 56. To establish the standard of the third element –injury in fact- that is likely to be
17 redressed by a favorable decision, Plaintiffs have satisfied their requirement because a
18 favorable decision by their Court shall provide relief permitted by the DPPA, including
19 an order to cease Defendant’s unauthorized obtainment, re-disclosure and/or re-sale
20 of Plaintiffs and Class Members’ motor vehicle records, a legal right provided to
21 injured parties within the DPPA which authorizes such redress. Plaintiffs will further be
22 redressed when their Court orders permanent injunctive relief because Defendant’s
23 violation of the DPPA is ongoing and, without the Court’s intervention, will continue
24 even if the Court were to award only a money judgment for past instances of DPPA
25 violations to Plaintiffs, but would do nothing to protect Plaintiff’s rights going forward.
26
27
28

VI. **STATEMENT OF FACTS**

A. Introduction

1
2 CHEVROLET SILVERADO C1500
3

4 **REQUEST FOR IMMEDIATE ACTION - TIME SENSITIVE MATERIAL ENCLOSED**
5

6 **WARNING: \$2,000 FINE, 5 YEARS IMPRISONMENT, OR BOTH FOR ANY PERSON INTERFERING OR OBSTRUCTING
7 WITH DELIVERY OF THIS LETTER. U.S. MAIL TTT.18 U.S. CODE**
8

9 **TO BE OPENED BY ADDRESSEE ONLY
10 PLEASE RESPOND WITHIN FIVE DAYS**
11

12 T265 P1 93513
13 EMMA LUSK
14 2213 BUFFALO GAP
15 LEANDER TX 78641-8898
16

17 



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27 57. For all consumers that have ever been harassed by direct marketing letters selling
28 "extended vehicle warranties" falsely advertising that your vehicle warranty had

1 expired, wondered how these companies knew your personal information, IE., your
2 name and address associated with the make, model, and year of your vehicle, and had
3 concerns that your home address was publicly being sold and feared that your family's
4 security was at risk and privacy violated, their class action will identify sources used to
5 obtain their personal information and implement such unauthorized activities, and the
6 elements of a business enterprise implemented by the obtainment of state motor
7 vehicle records, directly or indirectly, then re-disclosed and/or re-sold, in order to aid
8 and abet the direct marketing industry, acts done without the individuals' express
9 consent, a violation of the Driver's Privacy Protection Act ("DPPA").

12 58. Proof of such DPPA violations by the Defendants, the basis of their class action,
13 evidencing a pattern across the United States, was the result of a covert investigation
14 conducted by the State of Texas Department of Motor Vehicle Department which
15 "seeded" motor vehicle records sold to "Bulk Requestors", referencing persons and/or
16 entities that obtain the entire database of state motor vehicle records and/or obtain
17 all periodic updates. "Emma Lusk, 2213 Buffalo Gap, Leander Tx. 78641-888" was
18 seeded data provided by the State of Texas Department of Motor Vehicle Department
19 to Defendant National Recall & Data Services Inc. and Defendant Charles Holley, which
20 was then re-disclosed and/or re-sold to Defendant Naviss and National Affiliates, and
21 used for direct marketing, a violation of the DPPA.

25 59. The protections afforded consumers by the Driver's Privacy Protection Act is premised
26 on a screening process qualifying access to their state motor vehicle records. Their
27 obligation is imposed on any and all individuals and entities that obtain, re-disclose,
28

1 and resell such data, imposing a duty on "Authorized Recipients", acting as re-sellers
2 to exercise reasonable care in responding to requests to purchase the motor vehicle
3 records. Individuals and entities that obtain, re-disclose, and/or re-sell the motor
4 vehicle records obtained from state motor vehicle departments, must follow screening
5 policies and reasonable verification measures. Defendant National Recall & Data
6 Services Inc. and Defendant Charles Holley intentionally, or in the alternative,
7 negligently re-disclosed and/or re-sold motor vehicle records obtained from the State
8 Department of Motor Vehicles to Defendant National Affiliates, without adequate
9 screening precautions.

12 60. The unauthorized access to State Motor Vehicle Records exists at the "cost" of the
13 Plaintiffs and Class Member's privacy and security, creating a reasonable fear of
14 present and future injury, compelling individuals to take costly and burdensome
15 measures to protect their privileged information from risk of access and probable
16 harm. Kristi Dyroff, an advocate with the National Organization for Victim Assistance,
17 discussed the consequences from the improper access to motor vehicle records:

18 Kristy Dyroff, National Organization for Victim Assistance, "DPPA fails to provide
19 protection for crime victims", October 30, 2013, (last accessed June 3, 2016), online:
20 <http://www.trynova.org/category/nove-blog>.

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22
23
24
25 **B. Defendants' Business Practices and Associations**

26 61. On information and belief, the most prevalent unauthorized use of Motor Vehicles
27 Records obtained from State Department of Motor Vehicles is by those persons
28

1 and/or entities involved in the Vehicle Service Contract Industry, a billion-dollar
2 enterprise. In order to outline the Defendant's business practices, and the incentive
3 for Defendants to act as a "supplier" or "Distributor", an understanding of the "VSC
4 Industry" is necessary, including knowing the participants, and the participants'
5 functions.

62. There are at least six (6) principal participants in a VSC Industry: (1) the consumer who
7 purchases the VSC (the "Consumer"), (2) the dealer that markets the VSC to the
8 consumer (the "Dealer"), (3) the administrator that develops and administers the VSC
9 itself and is the party obligated to reimburse the cost of covered repairs (the
10 "Administrator"), (4) the risk retention group that guarantees to pay covered claims if
11 the Administrator does not satisfy its obligation to the Consumer (the "Insurer"), (5)
12 the financing organization that enables the Consumer to pay for the VSC (the
13 "Financing Organization"), and (6) "the supplier," referencing individuals and entities
14 that supply the leads originating from sources that include obtaining state motor
15 vehicle records.

63. The VSC Industry employs financial instruments to vertically integrate an association
20 of entities requiring a "lead supply chain". A state's MVR database provides the most
21 accurate and updated database of all licensed drivers and vehicles, providing a
22 marketing database surpassing all other sources. As such, the VSC industry is involved
23 with any and all means possible, at any costs, ignoring legal constraints, to procure
24 their database. Once the database is obtained then the marketing and solicitation
25 scheme can be implemented.

1 64. Defendant National Recall & Data Services Inc. is a corporation involved in the Direct
2 Marketing Industry, acting as a Direct Market Provider assisting Direct Marketing
3 persons and entities. Defendant Charles Holley is an individual involved in the Direct
4 Marketing Industry, acting as a Direct Market Provider assisting Direct Marketing
5 entities. Defendant National Recall & Data Services Inc. obtains state motor vehicle
6 records from many state DMVs.

7
8 65. Defendant Naviss is a corporation involved in the Direct Marketing Industry, acting as
9 a Direct Market Provider assisting Direct Marketing persons and entities. Defendants
10 Logomasini and Chrisco are individuals involved in the Direct Marketing Industry.

11
12 66. The VSC Industry is the poster child for marketing abuses, illegal telemarketing,
13 and deceptive mailers. It is a complex financial infrastructure, funded by a
14 multitude of financial institutions. The core of their industry is “fueled” by illegally
15 obtaining millions of motor vehicle records from State Motor Vehicle
16 Departments, the “grease” to create and send the VSC marketing letters.

17
18 C. **The Texas Department of Motor Vehicles conducted a covert investigation which**
19 **found undeniable proof that Defendants National Recall LLC. and NAVISS violated**
20 **DPPA**

21
22 67. In an effort to investigate the unauthorized access to Texas MVRs by KMB
23 Statistics L.L.C., presently a pending Federal Class Action, initially styled: Doe et.
24 al. v. Compact Information Systems Inc. et al., 3:13-cv-05013-M-BH, filed in the
25 United States District Court, Northern District of Texas, an action which had
26 included Compact Information Systems Inc., Accudata Integrated Marketing Inc.,
27 Elizabeth M. Blank, Data Solutions of America Inc., KMB Statistics L.L.C., and Doe

1 Defendants, and presently styled: Cross v. Blank, Adv. No.: 9:15-ap00926-FMD,
2 pending in the United States Bankruptcy Court for the Middle District of Florida, a
3 Freedom Of Information Act (“FOIA”) request was sent to the Texas Department
4 of Motor Vehicles which responded with a most incriminating series of
5 documents that revealed undeniable proof of DPPA violations by Defendants
6 National Recall & Data Services Inc., and Defendant Charles Holley evidencing
7 violations of the DPPA. Such proof of DPPA violations was obtained by State
8 Representatives of the Texas Department of Motor Vehicles.
9

10 68. Generally, State Department of Motor Vehicles' investigation to determine
11 liability for any and all individuals and entities involved in the unauthorized
12 obtainment, re-disclosure, and/or re-sale of motor vehicle records is a difficult
13 process. Driver's Privacy Protection Act, 18 U.S.C. §2724(a) "sets forth the three
14 elements giving rise to liability, i.e., that a defendant (1) knowingly obtained,
15 disclosed or used personal information, (2) from a motor vehicle record, (3) for a
16 purpose not permitted." Thomas v. George, Hartz, Lundeen, Fulmer, Johnstone,
17 King and Stevens, P.A., 525 F.3d 1107, 1111 (11th Cir. 2008), Taylor v. Acxiom.
18 Corp. 612 F.3d. 325. 5th Cir. 7/14/10. 5th Cir. Defendant's activity satisfied all
19 20 three elements giving rise to DPPA liability, (emphasis added).
21 22

23 69. One (1) of the reasons that State Department of Motor Vehicles have difficulty
24 proving liability for DPPA violations is because the data is aggregated with other
25 data then redistributed to a multitude of third parties, thus any attempt to
26 identify the initial source of the data is near impossible. State Motor Vehicle
27 28 Departments' attempting to monitor DPPA compliance would need to dissect the

1 hypothetical “State Motor Vehicle Record -Direct Marketing-Distribution
2 Network”, but such attempts are curtailed because the State DMV officials have
3 limited choice but to accept verbatim, the Bulk Requestor’s claimed permissible
4 DPPA uses. Another common ploy used by most Bulk Requestors attempting to
5 avoid detection is to claim one (1) legitimate DPPA use in order to bypass the
6 State Motor Vehicle Departments’ screening process, then, directly or indirectly,
7 re-disclose and/or re-sell the data to entities without DPPA permissible purposes.
8 An additional factor is that the risk assumed for detection of persons and/or
9 companies violating DPPA is minimal, while the “rewards” for acting as a
10 “supplier” are substantial since State Motor Vehicle Record databases “feed” the
11 billion dollar Vehicle Service Contract Industry. As such, few methods exist to
12 disprove DPPA compliance, that is, unless the State Motor Vehicle Departments
13 “Seed” the motor vehicle records provide to Bulk Requestors, a method used by
14 the Texas Department of Motor Vehicles.
15

16 70. Within the response to the Freedom of Information Act (“FOIA”) received from
17 the Texas Department of Motor Vehicles it revealed the propensity of Defendant
18 National Recall & Data Services Inc. and Defendant Charles Holley to violate the
19 DPPA. Defendant Charles Holley had entered into a contract with the Texas
20 Department of Motor Vehicles, on behalf of Defendant National Recall & Data
21 Services Inc., to obtain its database of motor vehicle records; (**See Exhibit 1**).
22

23 71. The DPPA permits states to be more restrictive in its implementation, but not
24 more lenient, thus the “Certification of Use” within the Defendant National Recall
25 & Data Services Inc. contract provided more stringent controls, obligating
26

1 Defendant National Recall & Data Services Inc., as the purchaser to have the
2 permissible use “itself”, thus not qualifying as a reseller if persons acquiring the
3 motor vehicle records from Defendant Charles Holley had a permissible use while
4 Defendant Charles Holley didn’t possess the permissible use, noted within the
5 contract as follows:

6

7 1. Certified intended uses include only those uses for which the Purchaser itself
8 will actually employ the information;

9 2. Certified intended uses do not include uses that are speculative or that will
10 be engaged in by persons acquiring the information from the Purchaser.

11 72. Defendant Charles Holley and Defendant National Recall & Data Services Inc. did
12 not possess a DPPA permissible use, nor had any intention to use the motor
13 vehicle records for permitted uses within the DPPA. The DPPA exceptions include
14 two (2) limiting factors: (1) The entities that may claim the exception, and (2) the
15 purpose for which information may be requested. Defendant Charles Holley had
16 certified four (4) permissible uses, of the fourteen possible “permissible”
17 purposes, when Defendant Charles Holley entered into a service contract with
18 the Texas Department of Transportation on behalf of Defendant National Recall
19 & Data Services Inc.; wherein the selections meant the authorization to obtain,
20 re-disclose, and/or re-sell motor vehicle information for the following purposes:

21

22 1. “A” which corresponds to the **“Recall Exception”**, referencing, “for use in
23 connection with matters of motor vehicle or driver safety and theft, including
24 but not limited to, providing notice of recalls, by motor vehicle manufacturers”;

25

26 2. “B” which corresponds to the **“Normal Course of Business Exception”**,

1 referencing, “to verify the accuracy of personal information submitted by the
2 individual to the business or agent, employee, or contractor of the business”;
3 3. “D” which corresponds to the “**Research Exception**”, referencing, “research or
4 in producing statistical reports but only if the personal information is not
5 published, re-disclosed, or used to contact any individual”, and
6 4. “E” which corresponds to the “**Insurance Exception**”, referencing, “an insurer
7 or insurance support organization, or by a self-insured entity, or an agent,
8 employee, or contractor of the entity, in connection with claims investigation
9 activities, antifraud activities, rating, or underwriting.”

10
11 73. In order to qualify under the “**Recall Exception**,” the request must be from a
12 business involved in motor vehicle safety and recalls, preferably Auto
13 Manufacturers. Defendant National Recall & Data Services Inc., and Defendant
14 Charles Holley’s disclosure and subsequent resale would have been for a use not
15 permitted. As such, neither Defendant National Recall & Data Services Inc.,
16 Defendant Charles Holley, nor any other Direct Marketing entities, were eligible
17 to obtain information pursuant to the Motor Vehicle Safety and Recall Exceptions,
18 pursuant to the DPPA permissible uses:

19
20 22 **“(b)Permissible Uses.”**—Personal information referred to in subsection (a) shall be
21 disclosed for use in connection with matters of motor vehicle or driver safety and
22 theft, motor vehicle emissions, motor vehicle product alterations, recalls, or
23 advisories, performance monitoring of motor vehicles and dealers by motor vehicle
24 manufacturers, and removal of non-owner records from the original owner records of
25 motor vehicle manufacturers to carry out the purposes of titles I and IV of the Anti Car
26 Theft Act of 1992, the Automobile Information Disclosure Act ([15 U.S.C. 1231](#) et seq.),
27 the Clean Air Act ([42 U.S.C. 7401](#) et seq.), and chapters 301, 305, and 321–331 of title
49, and, subject to subsection (a)(2), may be disclosed as follows:...

28 **(2)**For use in connection with matters of motor vehicle or driver safety and theft;
29 motor vehicle emissions; motor vehicle product alterations, recalls, or advisories;

1 performance monitoring of motor vehicles, motor vehicle parts and dealers; motor
2 vehicle market research activities, including survey research; and removal of non-
owner records from the original owner records of motor vehicle manufacturers.”

3 On information and belief, neither Defendant National Recall & Data Services Inc.,
4 Defendant Charles Holley, nor did any other Defendants, satisfy such DPPA
5 requirements. The Defendant National Affiliates obtained the Plaintiffs’ and Class
6 Members’ motor vehicle records, directly or indirectly from Defendant National Recall
7 & Data Services Inc. and Defendant Charles Holley. If none of the affiliates were
8 eligible to claim the “Recall Exception,” Defendant National Recall & Data Services Inc.
9 and Defendant Charles Holley’s disclosure and subsequent resale would have been for
10 a use not permitted. As such discovery is required to consider (1) whether Defendant
11 National Affiliates were eligible to request information pursuant to the Normal
12 Business Exceptions noted by Defendant National Recall & Data Services Inc. and
13 Defendant Charles Holley, (2) if so, whether the activities derived from the exceptions
14 had occurred, (3) if so, whether the activity had occurred. On information and belief,
15 such exceptions did not exist.

16 74. In order to qualify under the **“Normal Course of Business Exception,”** the
17 request must be from a business that requires verification of personal
18 information submitted by an individual to the business and for the purposes of
19 preventing fraud and pursuing legal remedies or recovering on a debt. On
20 information and belief, neither Defendant National Recall & Data Services Inc. or
21 Defendant Charles Holley, nor did any other Defendants, satisfy such DPPA
22 requirements. The Defendant National Affiliates obtained the Plaintiffs’ and Class
23 Members’ motor vehicle records, directly or indirectly from Defendant National
24

1 Recall & Data Services Inc. and Defendant Charles Holley. If none of the affiliates
2 were eligible to claim the “Normal Business Exception,” Defendant National
3 Recall & Data Services Inc. and Defendant Charles Holley’s disclosure and
4 subsequent resale would have been for a use not permitted. As such discovery is
5 required to consider (1) whether Defendant National Affiliates were eligible to
6 request information pursuant to the Normal Business Exceptions noted
7 by Defendant National Recall & Data Services Inc. and Defendant Charles Holley,
8 (2) if so, whether the activities derived from the exceptions had occurred, (3) if
9 so, whether the activity had occurred. On information and belief, such
10 exceptions did not exist.

13 75. In order to qualify under the “**Research Exception**,” the request must be from a
14 business involved in research and statistical reports, “so long as the personal
15 information is not published, re-disclosed, or used to contact individuals”.
16 Defendant National Recall & Data Services Inc. use of “Recall” or “Data Services”
17 within the title of its company may claim it operates within their industry, using
18 such identification as a “decoy” to avoid detection by State MVR Departments in
19 order to obtain motor vehicle records, but on information and belief, Defendant
20 National Recall & Data Services Inc. was involved in the direct marketing
21 industry with the intention to use the motor vehicle records itself, or resell the
22 data to parties involved in the direct marketing industry, and direct marketing
23 companies. On information and belief, neither Defendant National Recall & Data
24 Services Inc. or Defendant Charles Holley, nor did any other Defendants, satisfy
25 such DPPA requirements. Defendant National Affiliates obtained the Plaintiffs
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1 and Class Members' motor vehicle records, directly or indirectly from Defendant
2 National Recall & Data Services Inc. and Defendant Charles Holley. If Defendant
3 National Affiliates were not eligible to claim the "Research
4 Exception," Defendant National Recall & Data Services Inc. and Defendant
5 Charles Holley's disclosure and subsequent resale would have been for a use not
6 permitted. As such discovery is required to consider (1) whether Defendant
7 National Affiliates were eligible to request information pursuant to the Research
8 Exceptions noted by Defendant National Recall & Data Services Inc. and
9 Defendant Charles Holley, (2) if so, whether the activities derived from the
10 exceptions had occurred, (3) if so, whether the activity had occurred. On
11 information and belief, such exceptions did not exist.

14
15 76. In order to qualify under the "**Insurance Exception**", the request must be made
16 from either an Insurance Company, self-insured entity, or companies involved in
17 assisting entities in the Insurance Industry. On information and belief,
18 neither Defendant National Recall & Data Services Inc., Defendant Charles
19 Holley, nor did any other Defendants, satisfy such DPPA requirements. If the
20 Defendant National Affiliates were not eligible to claim the "Insurance
21 Exception" then Defendant National Recall & Data Services Inc., and Defendant
22 Charles Holley's claimed DPPA permissible uses within the contract would have
23 been for a use not permitted. As such discovery is required to consider (1)
24 whether Defendant National Affiliates were eligible to request information
25 pursuant to the Research Exceptions noted by Defendant National Recall & Data
26 Services Inc. and Defendant Charles Holley, (2) if so, whether the activities

1 derived from the exceptions had occurred, (3) if so, whether the activity had
2 occurred. On information and belief, such exceptions did not exist.

3 77. The Texas Department of Motor Vehicles' response to the Open Records Request
4 revealed that the state had implemented a compliance procedure to determine
5 if any person or company obtaining motor vehicle records were using such for
6 impermissible purposes, a procedure which involved inserting test records with
7 "seeded" data; hereinafter referred colloquially to as "fake MVRs", a procedure
8 to insert the test records into the files that were provided to any and all Bulk
9 Requestors of motor vehicle records, essentially to "track" motor vehicle records
10 obtained by Bulk Requestors, without their notice. Each Bulk Requestor was
11 individually assigned "fake MVRs", which included "fake" names, vehicle info,
12 VIN numbers, and bank lien information. Their assignment of specific fake MVR
13 data would allow a mechanism to confirm improper uses. A valid address was
14 used in order for State Officials to receive any direct marketing. Upon receipt by
15 a State Official, such letters would be correlated to its original source, thus
16 identifying individuals and entities involved in associated phases of the motor
17 vehicle records distribution. Dataspan, the data processing entity associated with
18 the Texas Department of Motor Vehicles to assist in motor vehicle record release
19 recorded the "seeded" data associated with each person and/or entity obtaining
20 the Texas Motor Vehicle records in bulk; (**See Exhibit 2**).

21 78. Unbeknownst to Defendant National Recall & Data Services Inc., Defendant
22 Charles Holley, and Defendant National Affiliates, representatives from the Texas
23 Department of Motor Vehicles were monitoring any unauthorized use of the

1 motor vehicle records provided to all Bulk Requestors that had obtained Texas
2 motor vehicle records, including Defendant National Recall & Data Services Inc.
3 and Defendant Charles Holley. Their investigation resulted in representatives of
4 the Texas Department of Motor Vehicles involved in the investigation being sent
5 direct marketing letters from persons and/or entities associated with motor
6 vehicle records provided to Defendant National Recall & Data Services Inc. and
7 Defendant Charles Holley. The “seeded” data provided to Defendant National
8 Recall & Data Services Inc. and Defendant Charles Holley, included, but was not
9 limited to, the following: Emma Lusk, 2213 Buffalo Gap, Leander Tx. 78641-8888.
10 This “fake” name, associated with an accurate address, was included in a direct
11 marketing solicitation letter sent by a Defendant National Affiliate identified as
12 “Motor Vehicle Services” using phone number: 1-866-938-4449; (**See Exhibit 3**),
13 Frances Lusk; (**See Exhibit 4**), and Helen Lusk; (**See Exhibit 5**).
14

15 79. This “seeded” data provided to Defendant National Recall & Data Services Inc.
16 and Defendant Charles Holley, also included, but was not limited to, the
17 following: Gina Lusk, 2213 Buffalo Gap, Leander Tx. 78641-8888. This “seeded
18 data” was included in a direct marketing solicitation letter sent by a company
19 identified as “VSC Administration” using phone number: 1-800-335-1522; (**See
20 Exhibit 6**).
21

22 80. Plaintiff Laning received a direct marketing solicitation letter from a company
23 identified as “Vehicle Administration Center” a direct marketer also using phone
24 number: 1-800-335-1522, the identical phone number noted in the Gina Lusk
25 letter; (**See Exhibit 7**). VSC Administration and Vehicle Administration Center are
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1 named in a lawsuit, noted below, sued by a company in privity with both entities
2 and noting they are associated corporate entities. Plaintiff Laning did not have a
3 prior commercial relationship with "VSC Administration" ,or "Vehicle
4 Administration Center", nor permitted them express consent to access his motor
5 vehicle records, **(See Exhibit 8)**.
6

7 81. Plaintiff Lopez received a direct marketing solicitation letter from a company
8 identified as "Vehicle Administration Center" a direct marketer also using the
9 phone number: 1-800-335-1522, the identical phone number noted in the Gina
10 Lusk letter; **(See Exhibit 9)**. VSC Administration and Vehicle Administration
11 Center are named in a lawsuit, noted below, sued by a company in privity with
12 both entities and noting they are associated corporate entities. Plaintiff Lopez
13 did not have a prior commercial relationship with "VSC Administration" ,or
14 "Vehicle Administration Center", nor permitted them express consent to access
15 his motor vehicle records, **(See Exhibit 10)**.
16

17 82. Vehicle Administration Center, VSC Administration, North American Vehicle
18 Insurance Specialists, LLC d/b/a NAVISS, VSC Services 101, LLC, VSC
19 Administration Services Center, Warranty Consultants Group, LLC, are companies
20 owned and operated by Clayton Logomasini, and Jason Chrisco. Reportedly,
21 North American Vehicle Insurance Specialists, LL.C d/b/a NAVISS' association
22 with Enterprise Financial Group, Inc. began on January 25, 2010 and ended in
23 2014. North American Vehicle Insurance Specialists, LL.C d/b/a NAVISS entered
24 into a contract with EFG agreeing to sell vehicle service contracts to customers
25 under a service contract program, designed and administered by EFG. The
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1 association though turned litigious resulting in a pending lawsuit in a Dallas Texas
2 Court. *Enterprise Financial Group, Inc. v North American Vehicle Insurance*
3 *Specialists, LL.C d/b/a NAVISS, et. al.* Case 3:15-cv-02036-B, US District Court,
4 Northern District of Texas, Dallas Division, case removed to Dallas District Court,
5 44th District Court, styled, *Enterprise Financial Group, Inc. v North American*
6 *Vehicle Insurance Specialists, LL.C d/b/a NAVISS, et.al*, DC-15-00923. Discovery
7 documents filed within the case claim this association involved all of NAVISS'
8 business, IE, "NAVISS took all of its business to EFG and was completely
9 dependent on EFG for funding to survive". Documents filed within the above
10 referenced legal action showed that EFG had agreed to finance the marketing
11 and advertising expenses for North American Vehicle Insurance Specialists, L.L.C.
12 d/b/a NAVISS, administration of the vehicle service contracts, including access to
13 Enterprise Financial Group, Inc.'s proprietary database which contains consumer
14 data, reportedly including "prospective customers", (emphasis added) :
15
16 "As part of EFG's regular course of business, EFG aggregates certain consumer
17 data into a proprietary, confidential, and secure database of electronically stored
18 information containing information which includes, but is not limited to, the
19 consumer's name, contact information, address,..." (**See Exhibit 11**).
20
21

22 83. Randy Elhston, Director of Vehicles Titles and Registration Division at the Texas
23 Department of Motor Vehicles sent Defendant Charles Holley a notice letter,
24 dated April 22, 2013, terminating Defendant National Recall & Data Services Inc.
25 and Defendant Charles Holley's access to Texas motor vehicle records, stating in
26 part, "Research indicates that the data you received was provided to an entity
27 that used the information for purposes other than those certified and in direct
28

1 violation of statute"; (**See Exhibit 12**).

2 84. Immediately following the termination of Defendant National Recall & Data
3 Services Inc. and Defendant Charles Holley's contract, Buck Emerson, on behalf
4 of the Loach, Inc. signed a contract to obtain the Texas motor vehicle records. On
5 June, 19, 2013, Buck Emerson and Loach, Inc. were denied access to Texas motor
6 vehicle records due to its association with Defendant National Recall & Data
7 Services Inc. and Defendant Charles Holley; (**See Exhibit 13**).

8 85. On information and belief, the following persons and entities are associated with
9 Defendant National Recall & Data Services Inc. and Defendant Charles Holley, in
10 addition to Buck Emerson and Loach, Inc.:

11 a. National Statistical Services Corporation, with its principle place of business
12 located at 711 South Carson Street, Suite 4, Carson City, NV 89701, both
13 businesses are owned and operated by Defendant Charles Holley. National
14 Statistical Services Corporation had its access to State MVRs terminated in
15 Washington State on July 1, 2011 and North Dakota on November 1, 2012;
16 (**See Exhibits 14, 15, and 16**);
17

18 b. Loh, Inc., operating under the fictitious name Loach Inc., using the same
19 address as Defendant National Recall & Data Services, Inc. and National
20 Statistical Services Corporation.

21 c. Mr. Tomas Milar was the Director with Defendant Recall & Data Services, Inc.,
22 moreover Mr. Milar reportedly associated with **two-hundred and nineteen (219)**
23 companies operating from the same address as Defendant National Recall & Data
24 Services, Inc. and National Statistical Services Corporation including acting as director
25

1 of Surelock Leads Inc..

2 86. The Florida Department of Highway Safety and Motor Vehicles response to an Open
3 Records Request revealed that Defendant National Recall & Data Services, Inc. and
4 Defendant Charles Holley had entered into a contract to obtain Florida motor vehicle
5 records, an obtainment that continues to date and reportedly involves seventeen
6 million individuals. The contract, DHSMV Contract No: HSMV-0320-13, is a September
7 2012 contract that replaced Contract No. HSMV 335-10. Defendant Charles Holley
8 signed the Florida contract on behalf of National Recall & Data Services, Inc. claiming
9 not four (4) DPPA permissible uses as in Texas, but three (3) DPPA permissible uses
10 IE, “Normal Course of Business” (4), “Research” (6), and “Insurance” (7), Exceptions,
11 noting such in a document referenced as “Attachment 1”. Defendant Charles Holley
12 sent correspondence to Mr. Warren Whitaker, Senior Highway Safety Specialist with
13 the Florida Department of Highway Safety and Motor Vehicles providing details
14 concerning Defendant National Recall & Data Services, Inc.’s claimed DPPA
15 permissible uses, conflating two (2) of the DPPA permissible uses, and interestingly
16 enough, omitting a permissible use related to the “**Recall**” exception even though
17 Defendant National **Recall** & Data Services, Inc. is allegedly in the “**Recall**” business.
18 The letter, dated September 15, 2012, was sent during a period when Defendant
19 Charles Holley began entering into contracts with State Motor Vehicle Departments
20 using Defendant National Recall & Data Services, Inc. as the named company, an
21 entity incorporated four (4) weeks earlier in Nevada on August 13, 2012, and not using
22 National Statistical Services Corporation, an entity under investigation by a many State
23 Motor Vehicle Departments for DPPA violations at such time; (**See Exhibit 17**).
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1 87. Tina Jensen, a Tampa Fox 13 Special Investigator specializing in Consumer Protection
2 Investigations, recently sought information from the Florida Department of Highway
3 Safety and Motor Vehicles as to the unauthorized access to Florida motor vehicle
4 records. Jensen's investigation resulted in the following reports:

5 <http://www.fox13news.com/news/fox-13-investigates/173793341-story>

6 <http://www.fox13news.com/news/local-news/183225466-story> .

7
8 The reports included testimony from a Florida Department of Highway Safety and
9 Motor Vehicles representative which repeatedly denies that the Florida Department
10 of Highway Safety and Motor Vehicles' sale of the motor vehicle records, reportedly a
11 seventy-three-million-dollar "enterprise", could possibly be associated with direct
12 marketing solicitation letters, even though overwhelming evidence exists of such
13 misuse, evidence obtained by other State Motor Vehicle Departments involving the
14 same companies accessing the Florida motor vehicle records and notice of such
15 investigations had been provided to the Florida Department of Highway Safety and
16 Motor Vehicles. The State Representative's steadfast position apparently is premised
17 upon a reliance of the state's "screening process" of prospective Bulk Requestors of
18 motor vehicle records, referencing persons and/or entities that obtain all Florida
19 motor vehicle records and updates periodically. Reportedly, the extent of the
20 screening process is limited to the following: 1) determine if the Bulk Requestor's
21 website correlates to the claimed business, and 2) confirm that the company is
22 incorporated. Defendant National Recall & Data Services, Inc.'s website provided
23 limited information as to its business practices: <http://www.nssc-usa.com/>.
24
25 Interestingly enough, the business address noted within the incorporation documents
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27
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1 and provided by Defendant Charles Holley on behalf of Defendant National Recall &
2 Data Services to the Florida Department of Highway Safety and Motor Vehicles is 5348
3 Vegas Drive, Suite 1236, Las Vegas, NV. 89108, a mail forwarding business that also
4 acts as the agent for service: [https://www.inccparadise.net/nevada/vegas-mail-](https://www.inccparadise.net/nevada/vegas-mail-forwarding/)
5 [forwarding/](https://www.inccparadise.net/nevada/vegas-mail-forwarding/). Defendant Charles Holley has also used many business addresses: 2710
6 Thomas Ave. Ste 465, Cheyenne, WY. 82001, a location associated with more than
7 **2000** companies: [http://www.npr.org/2011/07/02/137573513/shell-game-2-000-firms-](http://www.npr.org/2011/07/02/137573513/shell-game-2-000-firms-based-in-one-simple-house)
8 [based-in-one-simple-house](http://www.npr.org/2011/07/02/137573513/shell-game-2-000-firms-based-in-one-simple-house). The Florida Department of Highway Safety and Motor
9 Vehicles unwillingness to accept even the possibility that some persons and
10 companies obtaining Florida motor vehicle records may be violating the Driver Privacy
11 Protection Act (“DPPA), ignoring the findings of other state motor vehicle
12 departments, including but not limited to, Texas, North Dakota, and Washington,
13 means Florida residents and their families are without notice of these matters;
14 moreover, at risk of Safety, Privacy, and Identity Theft violations, (reportedly Florida
15 ranks number one (1) in Identity Theft nationally and use of motor vehicle records is a
16 prime component necessary for Identity Theft). Jensen’s relentless pursuit of the
17 truth, in hope to make a difference has prevailed though. Jensen has exposed that the
18 Florida Department of Highway Safety and Motor Vehicles is “**TURNING A BLIND EYE**”.
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23 **D. Defendants National Recall L.L.C. had a duty to exercise reasonable care as**
24 **“Resellers”, prior to release of Motor Vehicles Records obtained from State DMVs.**
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26 88. The legislative history of the DPPA makes it clear that it incorporated “the intentions
27 of the 1972 Privacy Act...[And also] include[d] the recommendations of the 1977
28 Privacy Protection Study Commission [(PPSC”)] report.” The goal was to prohibit

1 disclosure of “records” collected and maintained by a Government agency, except
2 under permissible circumstances. See 5 U.S.C. § 552a (b). The PPSC report
3 recommended that third party record holders be held to the “same standard” as the
4 Government in order to ensure compliance with the important statutory protections.
5 Personal Privacy is an Information Society: The Report of the Privacy Protection Study
6 Commission Ch. 13 (July 1977).

8 89. Their literal reading of the DPPA was designed to promote public safety and to protect
9 individual privacy, construed so as to maximize their deterrent effect – in particular,
10 by shifting burdens to institutional actors who regularly engage in the targeted
11 conduct or are otherwise in a position to minimize future violations.

13 90. Congress intended the states to be the “gatekeepers” of the motor vehicle records,
14 limiting the number of people with access to the personal information because the
15 greater the number of people with access, the greater the risk that personal
16 information will be disseminated to those who do not have valid uses for the personal
17 information.

19 91. Recognizing the threat caused by unfettered access to individuals’ Personal
20 Identifiable Information (“PII”) obtained from motor vehicle records, and seeking to
21 balance that concern against the legitimate need of certain parties to have access to
22 DMV records, Congress determined that those records should not be disclosed except
23 to those with a legitimate need for them. It embodied that intent in a statutory
24 scheme designed to carefully limit the uses for which such information may be
25 disclosed. 18 U.S.C. § 2721(b). Congress made clear its intent that the burden of
26 ensuring the permissibility of disclosures be borne by “Authorized Recipients” by

1 imposing a record keeping obligation on them to maintain a list of not only the people
2 to whom they disclosed the data, but also for what purpose the disclosure was made.
3 18 U.S.C. § 2721(c). The liability provisions of the DPPA are to be interpreted as
4 imposing an affirmative obligation on resellers to determine the true purpose of the
5 “Authorized Recipients.”

6
7 92. In each sentence of section 2721(c) Congress linked the term “Authorized Recipient”
8 to the specific section of 2721(b) that had authorized the release of the information to
9 the recipient. Congress intended that the “Authorized Recipients” to be individuals,
10 entities, or their agents, qualified to receive the information by the terms of section
11 2721(b). Resellers cannot obtain all of the personal information in the database simply
12 by calling themselves resellers. Entities requesting motor vehicle records have to
13 justify their receipt of personal information under the 2721(b) exception is applicable.
14 Defendants were not “Authorized Recipients.”

15
16 93. The United States Supreme Court analyzed the DPPA’s use of “Authorized Recipient”
17 (albeit in dicta) in *Reno v. Condon*, noting a person must have initially obtained the
18 data for a permissible purpose before resale or dissemination of the data:
19

20
21 After listing section 2721(b)’s fourteen permissible purposes, Chief Justice
22 Rehnquist equated authorized recipients under section 2721(c) with “private
23 persons who have obtained drivers’ personal information for one of the
24 aforementioned permissible purposes to further disclose that information for any
25 one of those purposes.” This is also the most logical conclusion based on the
language of the DPPA, the purpose of the statute, the legislative history and
common sense.(quoting *Reno v. Condon*, 528 U.S. at 146 (citing 18 U.S.C.
§2721(c)).

26
27 94. To ensure that the privacy of driver records is adequately protected under the
28 DPPA, it was necessary to impose a high standard of duty for resellers when the

1 records they sell are subsequently used for impermissible purposes, due in part
2 because an industry of “resellers” had arisen to facilitate acquisition by end-users of
3 information collected by State Motor Vehicle Bureaus. As the reseller is in the best
4 position to determine whether the subsequent use of the data would be permissible
5 under the Act, it is the reseller that must bear the burden of ensuring that an
6 impermissible use does not occur and must investigate to determine if entities
7 requesting the motor vehicle records have a DPPA permissible purpose. The state
8 agency ceases to be the custodian of the data once it is obtained by the reseller; the
9 reseller must therefore assume the responsibility and the liability for the subsequent
10 use of the data resulting from its intentional resale, especially as it relates to direct
11 marketing. The civil remedies provision would be rendered “toothless” if resellers
12 could insulate themselves from liability based solely on conclusory representations of
13 end users, without being required to exercise due care themselves.

17 95. The DPPA regulates the activity of resellers when acting as a “middleman”, and places
18 civil damage liability on the person and/or company that knowingly obtains, re-
19 discloses, resells, and purchases the motor vehicle records for improper purposes.

21 96. In light of the text, structure, and legislative history of the DPPA, resellers are subject
22 to a duty of reasonable care before disclosing DPPA-protected personal information,
23 18 U.S.C. §2721(b)-(c). Resellers must exercise reasonable care in responding to
24 requests for personal information drawn from motor vehicle records. Resellers are
25 liable if they do not secure proof that representations made by the recipient of
26 personal information was valid. Defendants failed to exercise such reasonable care
27 when reselling the motor vehicle records.

1 97. The structure of the DPPA supports the conclusion that resellers owe a duty of
2 reasonable care when reselling motor vehicle records to third parties. The DPPA
3 statute uses the word “knowingly,” revealing that a level of duty of care exists. The
4 DPPA provides an award of “punitive damages upon proof of willful or reckless
5 disregard of the law.” 18 U.S.C. § 2724(b)(2); In contrast, the court may award “actual
6 damages, but not less than liquidated damages in the amount of \$2,500.” 18 U.S.C. §
7 2724(b)(1). The actual damages provision is silent as to the degree of fault necessary
8 to trigger liability for actual damages. If, however, as the statute suggests, punitive
9 damages are available only for willful and reckless violations of the DPPA, then actual
10 damages must require something less—that is, conduct that is neither willful nor
11 reckless.

12 98. The structure of the DPPA, clearly indicates that the liability of a reseller of motor
13 vehicle records is not predicated on their knowledge of the end user’s actual purpose.
14 Rather, it is the same as the end user’s. That is because section 2722(a) makes no
15 distinction between the mental state required by the person who obtains motor
16 vehicle records and one who discloses it. Indeed, the statue on its face applies equally
17 to those who “obtain” and those who “disclose” Personal Identifiable Information, 18
18 U.S.C. § 2722(a).

19 99. Section 2721(c) does not suggests that a reseller may re-disclose protected
20 information so long as its customer claims to have a permissible use. Rather, the DPPA
21 authorizes the resale of information only if there is an actual, not just a stated,
22 permitted use. 18 U.S.C. § 2721(c); Thus, as a purely textual matter, the DPPA
23 indicates that a reseller who sells protected information to a client without an actual
24

1 permissible purpose is liable regardless what “certifications” that client has made.

2 100. Resellers owe the same or similar legal duty that obligates the State Motor Vehicle
3 Department’s when releasing motor vehicle records, that is to investigate fully
4 whether individuals or companies obtaining the motor vehicle records have a DPPA
5 permissible purpose. As the motor vehicle records are resold, in whole or part, the
6 likelihood of misuse grows exponentially. The DPPA provides no distinction as to
7 obligations of the end-user, resellers, nor the State Motor Vehicle Departments, as
8 Custodian of the motor vehicle records, *Gordon v. Softech Int'l, Inc.*, U.S., No. 13-
9 533, cert. den. 1/13/14; *Arcanum Investigations, Inc. v. Gordon*, U.S., No. 13-539, cert.
10 den. 1/13/14).

13 101. All Defendants are involved, directly or indirectly, in the Direct Marketing industry.
14 The DPPA restricts access to motor vehicle records for Direct Marketing unless express
15 consent is obtained. Defendants failed to obtain express consent. Subsection (b) (12)
16 implements an important objective of the DPPA—to restrict disclosure of personal
17 information contained in motor vehicle records to businesses for the purpose of direct
18 marketing and solicitation. Direct marketing and solicitation presented a particular
19 concern not only because these activities are of the ordinary commercial sort but also
20 because contacting an individual is an affront to privacy even beyond the fact that a
21 large number of persons have access to the personal information. The DPPA was
22 enacted in part to respond to the States’ common practice of selling personal
23 information to businesses that used it for marketing and solicitations. Congress chose
24 to protect individual privacy by requiring a state DMV to obtain the license holder’s
25 express consent before permitting the disclosure, acquisition, and use of personal
26 information.

1 information for bulk solicitation.

2 102. To verify the eligibility to invoke the claimed DPPA permissible purpose, an entity
3 must provide information, including but not limited to, proof relating to its business
4 which must correspond to its claimed DPPA uses, current status, activity of the
5 employing entity, and purported business affiliation. It is negligent if the reseller fails
6 to make proper inquiries of the end-user, especially if “red flags” exist, and provide
7 “red flags” requiring additional review prior to the purchase of the Plaintiff’s and Class
8 Members’ MVRs.

9 103. Defendant National Recall & Data Services Inc., and Defendant Charles Holley,
10 obtained the MVRs for a reason and with a purpose in mind when it entered into a
11 contract with State Motor Vehicle Departments to obtain motor vehicle records.
12 Federal Law, and State contractual duties existed, that obligated Defendant National
13 Recall & Data Services Inc., and Defendant Charles Holley, to obligate Defendant
14 Naviss and National Affiliates to use the requested MVR information for purposes
15 permitted by the DPPA. Hence, at a minimum, Defendant Naviss and National
16 Affiliates’ disclosures to Defendant National Recall & Data Services Inc., and Defendant
17 Charles Holley, were not permitted by the DPPA permitted uses, and totally
18 incompatible with the purpose for which the information was collected.

19 104. Defendant National Recall & Data Services Inc., and Defendant Charles Holley, acting
20 as a reseller, had an actual legal duty to perform, other than the ministerial task of
21 soliciting rote representations from prospective requestors. Resellers must adhere to
22 the same legal requirements as a State Department of Motor Vehicles representatives
23 when re-releasing motor vehicle records, including but not limited to, confirming

1 those obtaining motor vehicle records have a DPPA permissible use to obtain the
2 motor vehicle records. Their obligation is not met by a merely accepting verbatim the
3 end user's "say-so" in the presence of "red flags" suggesting the requested
4 information was being sought for an improper DPPA purpose. Defendant National
5 Recall & Data Services Inc., and Defendant Charles Holley, was well aware of
6 Defendant Naviss and National Affiliates' business and objectives prior to the release
7 to them of the Plaintiff's and Class Members' MVRs.

8
9 105. Defendant Naviss and National Affiliates acting individually and in concert with,
10 acting as a prospective requestor of data which includes Personal Identifiable
11 Information from Defendant National Recall & Data Services Inc., and Defendant
12 Charles Holley, also has a duty, other than the ministerial task of soliciting rote
13 representations from prospective resellers that the data was not derived, in whole or
14 part, from motor vehicle records obtained from State Motor Vehicle Departments.

15
16 The prospective requesters must confirm that the resellers had a DPPA permissible
17 use to obtain the data and to re-disclose and the resell motor vehicle records. Their
18 obligation is not met merely by accepting the reseller's "say-so" in the presence of
19 "red flags" suggesting the requested information was obtained for a proper purpose.

20
21 Research would reveal the association between Defendant National Recall & Data
22 Services Inc., and Defendant Charles Holley, moreover a cursory review of Defendant
23 Naviss and National Affiliates' website would reveal its direct marketing business, and
24 provide "red flags" requiring additional review prior to the purchase of the data.

25
26 106. Defendant National Recall & Data Services Inc., and Defendant Charles Holley, had an
27 ongoing business relationship with Defendant Naviss and National Affiliates through

1 which Defendant National Recall & Data Services Inc., and Defendant Charles Holley,
2 knew, or should have known, that Defendant Naviss and National Affiliates were
3 Direct Marketer Providers. Defendant Naviss and National Affiliates was required to
4 contractually agree with Defendant National Recall & Data Services Inc., and
5 Defendant Charles Holley, that it would only use information for purposes permitted
6 by the DPPA. Hence, at a minimum, Defendant Naviss and National Affiliates'
7 disclosures to Defendant National Recall & Data Services Inc., and Defendant Charles
8 Holley, were not permitted by the DPPA permitted uses, and totally incompatible with
9 the purpose for which the information was collected.

107. Defendant National Recall & Data Services Inc., and Defendant Charles Holley, was
11 legally obligated to maintain documents for five (5) years of any and all individuals and
12 entities that obtained the motor vehicle records. Discovery shall be required to
13 produce such documents.

108. Defendant Naviss and National Affiliates were legally obligated to certify its intended
11 DPPA uses, and obligate them to maintain documents for five (5) years of any and all
12 individuals and entities that obtained the motor vehicle records. Discovery shall be
13 required to produce such documents.

109. Defendant National Recall & Data Services Inc., and Defendant Charles Holley, failed
11 to verify the accuracy of underlying facts, purported business objectives and affiliations
12 of Defendant Naviss and National Affiliates declining to confirm inferences of risk that
13 existed that Defendant National Affiliates did not possess permissible DPPA purposes,
14 actions best construed as deliberate ignorance, or in the alternative, negligent.

110. Defendant National Recall & Data Services Inc., and Defendant Charles Holley, became

1 the custodian of the motor vehicle records with a duty to exercise reasonable care
2 when re-disclosing or reselling motor vehicle records. Third parties benefitted from
3 Defendant National Recall & Data Services Inc., and Defendant Charles Holley, as the
4 custodian. On information and belief, Third Parties that did not have a contract with
5 State Motor Vehicle Departments because they knew State Motor Vehicle
6 Departments would not authorize them to obtain MVRs since they were in the Direct
7 Marketing Industry knew it had no authority to obtain the state motor vehicle records
8 directly. While the contract with the State Motor Vehicle Departments was with
9 Defendant National Recall & Data Services Inc., and Defendant Charles Holley, for all
10 extent and purposes, Third Parties became the primary recipient of the motor vehicle
11 records transferred from the State Motor Vehicle Departments. Defendant National
12 Recall & Data Services Inc., and Defendant Charles Holley, failed in their duty as
13 gatekeeper, failing to exercise reasonable care by allowing third parties access to the
14 motor vehicle records in such manner. Defendant National Recall & Data Services Inc.,
15 and Defendant Charles Holley, failed intentionally, or in the alternative, negligently.
16

111. Defendant National Recall & Data Services Inc., and Defendant Charles Holley, as
20 custodian of the motor vehicle records, was obligated to investigate and determine
21 whether Defendant National Affiliates had a DPPA permissible use for the motor
22 vehicle records it sought from Defendant National Recall & Data Services Inc., and
23 Defendant Charles Holley; however Defendant National Recall & Data Services Inc.,
24 and Defendant Charles Holley, knowingly, with willful and wanton disregard, or in the
25 alternative, negligently, failed to provide a reasonable investigation of Defendant
26 National Affiliates prior to reselling the motor vehicle records. A minimal review by
27
28

Defendant National Recall & Data Services Inc., and Defendant Charles Holley, of Defendant National Affiliates' business practices would have revealed "red flags", as to its claimed DPPA permissible uses since it was a direct marketing entity.

112. Their obligation exists to conduct investigative duties on resellers, using minimal safeguards in a reseller's request process. Such additional burdens in doing so impose the benefit of preventing stalking, harassment, identity theft, and other criminal acts this would be well worth the time and expense of such a burden. Defendant National Recall & Data Services Inc., and Defendant Charles Holley, knowingly, or in the alternative carelessly, failed to take reasonable basic steps to confirm the truthfulness of the stated purposes of the claimed DPPA uses by Defendant National Affiliates. Their willful or negligent blindness is not a defense to liability.

vi.

DEFENDANT'S HARMFUL BUSINESS PRACTICES

113. Defendants' activities occurred throughout the United States, obtaining the motor vehicle records of Plaintiffs and the Class Members for purposes not permitted - a course of action, and a body of information, that is protected from access and disclosure by federal law.

114. Without remedy, Plaintiff's and Class Members' privacy will continue to be violated by Defendants and a multitude of companies affiliated with Defendants — companies they've never heard of, companies they have no relationship with, and companies they would never choose to trust with their motor vehicle records.

115. The collection, use, and disclosure of Plaintiff's and Class Members' motor vehicle records by Defendants implicates Plaintiff's and Class Members' privacy and physical

1 safety. Such information is afforded special attention due to the consequences for
2 both privacy and physical safety that may flow from its disclosure. The heightened
3 privacy and physical safety concerns generated by obtaining, using, and disclosing
4 such information, without authorization, is apparent in U.S. law, creating restrictive
5 consent standards for its obtainment, use, and disclosure.
6

7 116. Defendants obtained Class Members' motor vehicle records for the purpose of
8 committing a tortious and/or criminal act, and violated the rights of Plaintiffs and Class
9 Members.
10

11 117. Defendants have, either directly, or by aiding, abetting, and/or conspiring to do so,
12 willfully, knowingly, negligently, or recklessly, disclosed, exploited, misappropriated
13 and/or engaged in widespread commercial usage of Plaintiff's and the Class Members'
14 motor vehicle records, obtaining personal information for Defendants' own benefit,
15 without legal authorization, and without Plaintiff's and Class Members' knowledge,
16 authorization, or consent. Such conduct constitutes a highly offensive and dangerous
17 invasion of Plaintiff's and the Class Members' privacy and safety.
18

19 118. Defendants knowingly obtained, disclosed, and/or re-sold Plaintiffs and Class
20 Members personal information, data derived from motor vehicle records in whole or
21 part, for uses not permitted legally, a violation of a federal law which afforded
22 statutory protections.
23

24 119. At all times material, Defendants, and agents of the Defendants, knew, or reasonably
25 should have known, that their actions violated clearly established statutory rights of
26 the Plaintiffs and the Class members.
27

28 120. The individual Defendants knowingly authorized, directed, ratified, approved,

1 acquiesced in, committed or participated in disclosing Plaintiff's and the Class
2 members' highly restricted personal information.

3 121. The individual Defendants were aware, or should have been aware, that such a
4 disclosure of Plaintiff's and the Class members' highly restricted personal information,
5 without the express consent of the person to whom the information pertained was an
6 invasion of privacy in violation of the DPPA.

7 122. Plaintiffs and Class Members were harmed when Defendants intentionally, or in the
8 alternative, negligently, obtained, processed, disseminated, stored, and used motor
9 vehicle records to market and solicit Plaintiff's and Class Members', obtained without
10 authorization, and invading their right of privacy.

11 123. Defendants' conduct caused harm to Plaintiff's and Class Members' privacy and
12 safety expectations.

13 124. Defendants were not authorized to have free access to Plaintiff's and Class Members'
14 motor vehicle records for purposes unrelated to Defendants' claimed DPPA purpose
15 when initially obtaining the motor vehicle records from the state.

16 125. Defendants failed to acquire, independently, and in concert, the express consent, of
17 Plaintiffs and Class Members before obtaining, collecting, generating, deriving,
18 disseminating, storing, or causing to be stored, re-disclosing or purchasing the MVR
19 data of Plaintiffs and Class Members.

20 126. The Defendant provided the Plaintiff's and Class Members' MVR data to third parties
21 in the form in which it is acquired or Defendants changed the form or content of the
22 MVR data in order to avoid detection.

23 127. Third parties associated with Defendants that accessed Plaintiff's and Class
24

1 Members' motor vehicle records failed to provide notice of any and all of its activities,
2 any and all uses of the motor vehicle records, present location of all motor vehicle
3 records, and the identity of parties that accessed such motor vehicle records.

4 128. The Defendants accessed MVR data which included information about children that
5 qualify to obtain a driver's license and/or register a motor vehicle, failing to distinguish
6 personal data about children ages 18 and under from personal data about adults.

7 129. The Defendants failed to provide adequate policies, practices, and procedures
8 relating to the re-disclosure and resale to third parties obtaining the Plaintiff's and
9 Class Members' motor vehicle records.

10 130. The Defendants failed to monitor compliance regarding the conditions of use
11 between third parties involved in the re-disclosure, resale of Plaintiff's and Class
12 Members' motor vehicle records, failing to enumerate prohibitions and restrictions on
13 access to the motor vehicle records.

14 131. Defendants used, or permitted to be used, false and misleading advertisements,
15 derived from the data within Plaintiff's and Class Members' motor vehicle records, in a
16 marketing and solicitation exploit, sending a deceptive mailer which included false
17 statements advising Plaintiffs and Class Members that their auto warranties had
18 expired, or were about to expire, creating a sense of urgency by claiming the offering
19 period was limited, mailing such in an envelope which appeared to be state official
20 business.

21 132. Defendants' activities alleged herein in parts constituted a knowing and intentional
22 scheme to defraud Plaintiffs and the Class Members, and to wrongfully access and
23 retain Plaintiff's and Class Members' motor vehicle records.

1 133. In the course of committing the acts described above, Defendants intentionally
2 accessed, on a repetitive basis, and without authorization, documents, derived in
3 whole or part, from government facilities, in order to obtain Plaintiff's and Class
4 Members' motor vehicle records, intentionally exceeding access authorization,
5 obtaining, and using Plaintiff's and Class Members' motor vehicle records for
6 impermissible purposes.

7 134. Harms and damages to Plaintiffs and the Class Members occurred during the class
8 period set forth in the factual allegations herein and continue to the present, as a
9 consequence of Defendants' conduct in harvesting Plaintiff's and Class Members'
10 motor vehicle records.

11 135. Further, through its practices, Defendants have been able to raise its profile as
12 possessing motor vehicle records with many companies, enabling Defendants to
13 attract business, increase its prospective revenue, secure investment funding, and
14 thereby profit from its conduct described herein.

15 136. As with any form of property, Plaintiffs, as the owners, should be compensated for
16 the use and exploitation thereof, and if they are not, they suffer concrete, measurable
17 damage and injury, the exact amount of which shall be provided by Plaintiffs through
18 expert opinion.

19 137. The Defendants acquired Plaintiff's and Class Members' motor vehicle records that were
20 unnecessary to motor vehicle records stated functions, but were useful to the
21 Defendants in their commercial compilation, and use of the data derived from the motor
22 vehicle records. With the motor vehicle records acquired, the Defendants used the
23 information to compile—in addition to the types of information—personal and private

1 information that included consumers' personal characteristics.

2 138. During the Class Period, each Plaintiffs named herein had personal motor vehicle
3 records obtained, used, re-disclosed, stored, resold, and purchased for purposes that
4 included marketing and solicitation, without their express consent. Such data was
5 identifiable as to each of the Plaintiffs and Class Members and were transmitted to third
6 parties for purposes wholly unrelated to its use and functionality when Plaintiffs and
7 Class Members produced such to the state. Based upon information and belief, the
8 motor vehicle records continue to be sold to a multitude of entities.
9
10

11 **VII.**
12 **CLASS ALLEGATIONS**

13 140. Plaintiffs bring their action on behalf of themselves and as a class action pursuant to
14 Rule 23 of the Federal Rules of Civil Procedure. Plaintiffs seek certification of the
15 following classes (collectively, the "Classes"):

16 **NATIONWIDE CLASS:** All persons in the United States who, on or after, four (4) years
17 prior to the date of their filed complaint, through the final disposition of this or any
18 related actions (the "Class Period"), had Defendant National Recall & Data Services, Inc.,
19 and Defendant Charles Holley, obtain their motor vehicle records from their State
20 Department of Motor Vehicles, to re-disclose, and/or resell, for direct marketing
purposes, without their express consent, in violation of the Driver's Privacy Protection
Act, 18 U.S.C. §2721 et seq.

21 **NAVISS SUBCLASS:** All persons in the United States who, on or after, four (4) years prior
22 to the date of their filed complaint, through the final disposition of this or any related
23 actions (the "Class Period"), had Defendant NAVISS, obtain directly or indirectly, their
24 motor vehicle records from Defendant National Recall & Data Services, Inc., and
25 Defendant Charles Holley, to re-disclose, and/or resell, for direct marketing purposes,
without their express consent, in violation of the Driver's Privacy Protection Act, 18 U.S.C.
§2721 et seq.

26
27 141. Excluded from the class are the Defendants, its employees, officers, directors, agent,
28 legal representatives, heirs, assigns, successors, individual or corporate entities acting

1 within a partnership, joint venture, trust, association, union, subsidiaries, whether
2 wholly or partially owned, divisions, whether incorporated or not, affiliates, branches,
3 joint ventures, franchises, operations under assumed names, websites, and entities
4 over which Defendants' exercises supervision or control, or group of individuals
5 associated in fact, although not a legal entity, or other legal entity, in addition to
6 Plaintiff's legal counsel, employees, and their immediate family, the judicial officers and
7 their immediate family, and associated court staff assigned to their case, and all
8 persons within the third degree of consanguinity, to any such persons.
9

10 142. Plaintiffs reserve the right to revise these definitions of the classes based on facts they
11 learn as litigation progresses.

12 143. The Class consists of millions, if not tens of millions, of individuals and other entities,
13 making joinder impractical.

14 144. The members of the Class are identifiable from the information and records in the
15 custody of the Defendants identified in the Class definition, and the State Motor
16 Vehicle Department which provided motor vehicle records to National Recall & Data
17 Services Inc..

18 145. Defendants' conduct, as complained of herein, is generally applicable to the Class,
19 thereby making appropriate final injunctive relief or corresponding declaratory relief
20 with respect to the Class as a whole.

21 146. The claims of Plaintiffs are typical of the claims of all other Class Members.

22 147. Plaintiffs will fairly and adequately represent and protect the interests of the Class.

23 Plaintiffs have suffered damages in their own capacity from the practices complained
24 of, in that their personal information or highly restricted personal information has been

1 unlawfully obtained, disclosed, and sold for a profit, and is ready, willing, and able, to
2 serve as Class representatives.

3 148. Plaintiffs and their counsel are committed to vigorously prosecuting their action on
4 behalf of the Class Members, and have the financial resources to do so. Neither
5 Plaintiffs nor their counsel have any interest that might cause them not to vigorously
6 pursue their action. Plaintiffs have retained counsel with substantial experience in
7 prosecuting complex litigation and class actions involving unlawful commercial
8 practices, including, but not limited to, the following Federal Privacy Class Actions:
9

10 Lane v. Facebook, Inc., 696 F.3d 811, 821 (9th Cir. 2012) cert. denied, 13-136, 2013
11 WL 5878083 (U.S. Nov. 4, 2013), a Federal Class Action, decided by the United States
12 Supreme Court, involving similar underlying facts as the present action, about 30
13 companies, violations of the Video Privacy Protection Act ("VPPA"), 18 U.S.C. §
14 2710, et seq.;

15 Cross v. Blank, Adv. No.: 9:15ap00926FMD, (M.D. Fla. 2015), a Federal Class Action
16 involving similar underlying facts as the present action, violations of the Driver's
17 Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721, et seq.;

18 Cook v. ACS State & Local Solutions, Inc. 663 F.3d 989 (10th Cir. 2011), a Federal
19 Class Action involving similar underlying facts as the present actions violations of
20 the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721, et seq.;

21 Doe et. al. v. Compact Information Systems Inc. et al., 3:13cv05013MBH, (N.D. Tex.
22 2013), a Federal Class Action involving similar underlying facts as the present action,
23 violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721, et seq.;

24 Haney v. Recall Center, No. 10-cv-04003 (W.D. Ark. May 9, 2012) a Federal Class
25 Action, (certified class action), involving similar underlying facts as the present
26 action, violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721,
et seq.;

27 Richard Fresco v. R.L. Polk., No. 09-13344 (11th Cir. 2010), (Fresco II"-Intervention),
28 a Federal Class Action involving similar underlying facts as the present action,
violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. § 2721, et seq.;

1
2 Sharon Taylor et al. v. Acxiom Corporation et al., 2:0-cv-0001, (E.D. Tex. 2007), a
3 Federal Class Action involving similar underlying facts as the present action, about
4 50 companies, violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §
5 2721, et seq.;

6
7 Sharon Taylor et. al. v. ACS State & Local Solutions, Inc. et. al., 2:07-cv-0013, (E.D.
8 Tex. 2007), a Federal Class Action involving similar underlying facts as the present
9 action, about 50 companies, violations of the Driver's Privacy Protection Act
10 ("DPPA"), 18 U.S.C. § 2721, et seq.;

11
12 Sharon Taylor et. al. v. Texas Farm Bureau Mutual Insurance Company et.al., 2:07-
13 cv-0014, (E.D. Tex. 2007), a Federal Class Action involving similar underlying facts as
14 the present action, about 50 companies, violations of the Driver's Privacy Protection
15 Act ("DPPA"), 18 U.S.C. § 2721, et seq.;

16
17 Sharon Taylor et. al. v. Safeway Inc. et. al., 2:07-cv-0017, (E.D. Tex. 2007), a Federal
18 Class Action involving similar underlying facts as the present action, about 50
19 companies, violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §
20 2721, et seq.;

21
22 Sharon Taylor et. al. v. Biometric Access Company et. al., 2:07-cv-0018, (E.D. Tex.
23 2007), a Federal Class Action involving similar underlying facts as the present action,
24 about 50 companies, violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §
25 2721, et seq.;

26
27 Sharon Taylor et. al. v. Freeman Publishers Inc., 2:07-cv-0410,, (E.D. Tex. 2007), a
28 Federal Class Action involving similar underlying facts as the present action, about
29 50 companies, violations of the Driver's Privacy Protection Act ("DPPA"), 18 U.S.C. §
30 2721, et seq..

31
32 149. A class action will cause an orderly and expeditious administration of Class Members'
33 claims and economies of time, effort, and expense will be fostered, and uniformity of
34 decisions will be ensured. Individual Class Members are unlikely to be aware of their
35 rights and are not likely to be in a position (either through experience or financially) to
36 commence individual litigation against Defendants.

1 150. Absent a class action, most Class Members would find the cost of litigating their
2 claims to be prohibitive and will have no effective remedy. The class treatment of
3 common questions of law and fact is also superior to multiple individual actions or
4 piecemeal litigation in that it conserves the resources of the courts and the litigants,
5 and promotes consistency and efficiency of adjudication.

6
7 151. The Defendants have acted and failed to act on grounds generally applicable to
8 Plaintiffs and all of the other Class Members, requiring the Court's imposition of
9 uniform relief to ensure compatible standards of conduct toward the Class Members.
10

11 152. The factual and legal basis of Defendants' liability to Plaintiffs, and to the other Class
12 Members are the same, resulted in injury to Plaintiffs and all of the other Class
13 Members. Plaintiffs and the other Class Members have all suffered harm and damages
14 as a result of Defendants' wrongful conduct.
15

16 153. Certification of a class under Fed. R. Civ. P. 23 is appropriate because Plaintiffs and
17 the putative Class Members have questions of law and fact that are common to the
18 Class that predominate over any questions affecting only individual members of the
19 Class, and a class action is superior to all other available methods for fair and efficient
20 adjudication of their controversy in fact, the wrongs suffered and remedies sought by
21 Plaintiffs and the other members of the Class are premised upon an unlawful scheme
22 participated in by Defendants.
23

24 154. There are many questions of law and fact common to Plaintiffs and the Class
25 Members, and those questions predominate over any questions that may affect
26 individual Class Members. Common questions for the Class include, but are not limited
27 to the following:
28

- 1 1. whether Defendant National Recall & Data Services Inc. and Defendant Charles
2 Holley obtained, re-disclosed, and/or resold Plaintiffs and Class Member's personal
3 information contained within motor vehicle records maintained by the State motor
4 vehicle departments;
- 5 2. whether Defendant Naviss obtained, re-disclosed, and/or resold Plaintiffs and Class
6 Member's personal information contained within motor vehicle records
7 maintained by the State motor vehicle departments;
- 8 3. whether Defendant National Recall & Data Services Inc. and Defendant Charles
9 Holley had a DPPA permissible use to obtain, re-disclose, and/or resell Plaintiffs
10 and Class Member's personal information contained within motor vehicle records
11 maintained by the State motor vehicle departments;
- 12 4. whether Defendant Naviss had a DPPA permissible use to obtain, re-disclose,
13 and/or resell Plaintiffs and Class Member's personal information contained within
14 motor vehicle records maintained by the State motor vehicle departments;
- 15 5. whether Defendant National Recall & Data Services Inc. and Defendant Charles
16 Holley obtained the written express consent of Plaintiffs and Class Members to
17 obtain, re-disclose, and/or resell Plaintiffs and Class Member's personal
18 information contained within motor vehicle records maintained by the State motor
19 vehicle departments;
- 20 6. whether Defendant Naviss obtained the written express consent of Plaintiffs and
21 Class Members to obtain, re-disclose, and/or resell Plaintiffs and Class Member's
22 personal information contained within motor vehicle records maintained by the
23 State motor vehicle departments;
- 24 7. whether Defendant National Recall & Data Services Inc. and Defendant Charles
25 Holley acted knowingly when it obtained, re-disclosed, and/or resold Plaintiffs and
26 Class Member's personal information contained within motor vehicle records
27 maintained by the State motor vehicle departments;
- 28 8. whether Defendant Naviss acted knowingly when it obtained, re-disclosed, and/or
 resold Plaintiffs and Class Member's personal information contained within motor
 vehicle records maintained by the State motor vehicle departments;
- 29 9. whether Defendant National Recall & Data Services Inc. and Defendant Charles
30 Holley's conduct described herein violates the Driver's Privacy Protection Act, 18
31 U.S.C. §2721;
- 32 10. whether Defendant Naviss' conduct described herein violates the Driver's Privacy
33 Protection Act, 18 U.S.C. §2721;

- 1 11. whether Defendant National Recall & Data Services Inc. and Defendant Charles
2 Holley as custodians of the Plaintiff's and Class Members' motor vehicle records,
3 possessed a duty to use reasonable care to investigate and determine the validity
4 of the claimed DPPA permissible uses by Defendant Naviss, prior to, during, and
5 after, re-disclosing, and/or re-selling Plaintiff's and Class Members' motor vehicle
6 records to such entities by permitting procurement, re-disclosure, and re-sale of
7 the Plaintiff's and Class Members' motor vehicle records by such entities, and if so,
8 whether Defendant National Recall & Data Services Inc. and Defendant Charles
9 Holley intentionally, or in the alternative, negligently failed in their obligation;
- 10 12. whether Defendant Naviss, as recipients of the Plaintiff's and Class Members'
11 motor vehicle records from Defendant National Recall & Data Services Inc. and
12 Defendant Charles Holley had a duty to use reasonable care to investigate and
13 determine the validity of the claimed DPPA permissible uses by Defendant National
14 Recall & Data Services Inc. and Defendant Charles Holley used to obtain the motor
15 vehicle records from the State Department of Motor Vehicles, prior to, during, and
16 after, obtaining Plaintiff's and Class Members' motor vehicle records, and if so,
17 whether Defendant Naviss intentionally, or in the alternative, negligently failed in
18 their obligation;
- 19 13. whether Defendant National Recall & Data Services Inc. and Defendant Charles
20 Holley complied with 18 U.S.C. §2721 (c), the obligation to maintain a record of
21 any person and/or company that Defendant National Recall & Data Services Inc.
22 and Defendant Charles Holley re-disclosed, and /or resold Plaintiffs and Class
23 Member's personal information contained within motor vehicle records
24 maintained by the State motor vehicle departments for a period of five (5) years;
25 and if so, whether Defendant National Recall & Data Services Inc. and Defendant
Charles Holley intentionally, or in the alternative, negligently failed in their
obligation;
- 26 14. whether Defendant Naviss complied with 18 U.S.C. §2721 (c), the obligation to
27 maintain a record of any person and/or company that Defendant Naviss re-
28 disclosed, and /or resold Plaintiffs and Class Member's personal information
contained within motor vehicle records maintained by the State motor vehicle
departments for a period of five (5) years; and if so, whether Defendant Naviss
intentionally, or in the alternative, negligently failed in their obligation;
- 29 15. the nature, and extent of Plaintiff's and Class Members' damages;
- 30 16. the nature, and extent of all statutory penalties, including liquidated damages of
31 \$2500.00, and/ or damages for which Defendant National Recall & Data Services
32 Inc. and Defendant Charles Holley are liable for, and legally obligated to, Plaintiffs
33 and Class Members;

17. the nature, and extent of all statutory penalties, including liquidated damages of \$2500.00, and/ or damages for which Defendant Naviss is liable for, and legally obligated to, Plaintiffs and Class Members;

18. whether Plaintiffs and Class Members are entitled to appropriate injunctive relief against Defendant National Recall & Data Services Inc. and Defendant Charles Holley;

19. whether Plaintiffs and Class Members are entitled to appropriate injunctive relief against Defendant Naviss, and

20. whether punitive damages are appropriate.

155. The questions of law and fact common to Class Members predominate over any questions affecting only individual members; and a class action is superior to all other available methods for the fair and efficient adjudication of their controversy.

COUNT I

**Violations of the Driver's Privacy Protection Act, § 18 U.S.C. § 2721 et seq.:
On Behalf of All Classes, and against All Defendants**

156. Plaintiffs incorporate by reference and re-allege all paragraphs previously alleged herein.

157. As set forth herein, Defendants violated the Driver's Privacy Protection Act, 18 U.S.C. § 2721, by engaging in the acts alleged in their complaint.

158. The Driver's Privacy Protection Act, 18 U.S.C. §2721 (a) et seq., regulates obtaining and disclosing personal information gathered by State Departments of Motor Vehicles, making it unlawful for a person or organization from knowingly obtaining or disclosing personal information, or highly restricted personal information contained in motor vehicle records for any purpose not specifically enumerated under §2721(b).

159. Accordingly, Defendants violated 18 U.S.C. §2721 et seq. by intentionally obtaining,

1 re-disclosing, and/or re-selling Plaintiff's and Class Members' motor vehicle records
2 without knowledge, consent, or authorization, for purposes not specifically
3 enumerated with the act.

4 160. Plaintiffs and Class Members are "person[s] referencing" "an individual, organization,
5 or entity, but does not include a State or agency thereof", within the meaning of 18
6 U.S.C. §2725(2).

7 161. 18 U.S.C. § 2724(a) prohibits the release and disclosure of personal information, as
8 defined in 18 U.S.C. § 2725(3) about an individual obtained by the State Motor Vehicle
9 Department except as provided in subsection (b), permissible uses, regulates the
10 prohibition on release and use of certain personal information from State motor
11 vehicle records.

12 162. 18 U.S.C. §2725(3) "personal information" means information that identifies an
13 individual, including an individual's photograph, social security number, driver
14 identification number, name, address (but not the five (5) digit zip code), telephone
15 number, and medical or disability information; but does not include information on
16 vehicular accidents, driving violations, and driver's status.

17 163. The contents of the records obtained by Defendants pertaining to the Plaintiffs and
18 Class Members constitute a "motor vehicle record", referencing "any record that
19 pertains to a motor vehicle operator's permit, motor vehicle title, motor vehicle
20 registration, or identification card issued by a department of motor vehicles", within
21 the meaning of 18 U.S.C. §2725(1).

22 164. 18 U.S.C. § 2722(b), prohibits any organization or entity from making any false
23 representation to obtain any personal information or highly restricted personal

1 information from an individual's motor vehicle record.

2 165. Defendants violated 18 U.S.C. §2721 (b), individually, and in concert, by making false
3 representations to knowingly obtain the Plaintiff's and Class Members' motor vehicle
4 records, directly or indirectly, for Direct Marketing purposes, knowingly, or in the
5 alternative, providing for use in marketing and solicitation Plaintiffs and Class
6 Members, without their express consent.

7 166. 18 U.S.C. §2725(5) "express consent" means consent in writing, including consent
8 conveyed electronically that bears an electronic signature as defined in section 106(5)
9 of Public Law 106-229.

10 167. 18 U.S.C. § 2721(c), permits an "Authorized Recipient" of personal information
11 (except for some exceptions) to re-disclose and/or re-sell the information, but only for
12 a claimed use permitted under 18 U.S.C. § 2721(b). Defendant National Recall & Data
13 Services Inc., Defendant Charles Holley and Defendant NAVISS were not Authorized
14 Recipients, thereby violating 18 U.S.C. § 2721(c).

15 168. Defendant National Recall & Data Services Inc. and Defendant Charles Holley violated
16 18 U.S.C. § 2721(c) by re-disclosing and/or re-selling Plaintiff's and Class Members'
17 information to Defendant Naviss and National Affiliates, non-Authorized Recipients.

18 169. Defendant National Recall & Data Services Inc. and Defendant Charles Holley are
19 liable directly and/or vicariously for re-disclosure and resale to Defendant Naviss and
20 National Affiliates, failing to use reasonable care to investigate Defendant Naviss and
21 National Recall Affiliate's claimed DPPA permissible uses when re-disclosing and/or re-
22 selling Plaintiff's and Class Members' motor vehicle records to such entities.

23 28 170. 18 U.S.C. § 2722(b)(12), prohibits the use of motor vehicle records for bulk

1 distribution for surveys, marketing or solicitations unless the State has obtained the
2 express consent of the person to whom such personal information pertains.

3 Defendant NAVIIS violated 18 U.S.C. § 2722(b)(12) by obtaining, re-disclosing, and/or
4 re-selling the motor vehicle records for purposes that include direct marketing,
5 without the express consent of Plaintiffs and Class Members.

6
7 171. Defendant NAVIIS and National Affiliates, violated 18 U.S.C. § 2721(c) as recipients of
8 the Plaintiff's and Class Members' motor vehicle records from Defendant National
9 Recall & Data Services Inc. and Defendant Charles Holley failing to use reasonable care
10 to investigate and determine the validity of the claimed DPPA permissible uses by
11 Defendant National Recall & Data Services Inc. and Defendant Charles Holley used to
12 obtain the motor vehicle records from the State Department of Motor Vehicles, prior
13 to, during, and after, obtaining Plaintiff's and Class Members' motor vehicle records.
14
15

16 172. Plaintiffs and the Class have suffered damages, as alleged herein, and pursuant to 18
17 U.S.C. § 2724(b)(1), are entitled to actual damages, but not less than liquidated
18 damages in the amount of \$2,500 each.
19

20 173. Plaintiffs and the Class, pursuant to 18 U.S.C. § 2724(b)(1), are entitled to
21 preliminary, equitable, and declaratory relief, in addition to statutory damages of the
22 greater of money, actual and punitive damages, reasonable attorneys' fees, and
23 Defendants' profits obtained from the above-described violations. Unless restrained
24 and enjoined, Defendants will continue to commit such acts. Plaintiffs remedy at law is
25 not adequate to compensate him for these inflicted and threatened injuries, entitling
26 Plaintiffs to remedies including injunctive relief as provided by 18 U.S.C. § 2724(b)(1).
27
28

174. As a direct and proximate result of the aforesaid acts and activities of Defendants,

1 Plaintiffs, and each of them, have been caused to sustain harm.

2 175. All of the acts and activities of Defendants, as heretofore set out, were performed
3 intentionally, fraudulently, maliciously, knowingly, conspiratorially, and on occasion,
4 negligently. Plaintiffs and Class Members were damaged thereby, and seek redress
5 thereof.

6

7 **PRAYER FOR RELIEF**

8 **WHEREFORE**, Plaintiffs, individually, and on behalf of all others similarly situated,
9 respectfully prays for judgment against Defendants as follows:

10 a) For an order certifying that their action may be maintained as a class action under Fed.
11 R. Civ. P. 23(a) and (b)(1)(a), (b)(2), and (b)(3);
12
13 b) For an order designating Plaintiffs and their counsel as representatives of the Class;
14
15 c) For a declaration that Defendants' actions violated the Federal Driver's Privacy
16 Protection Act, 18 U.S.C. §2721, and for all actual damages, statutory damages,
17 penalties, and remedies available as a result of Defendants' violations of the DPPA, but
18 not less than liquidated damages in the amount of \$2,500 for each Plaintiff and each
19 member of the Class;
20 d) As applicable to the Class mutatis mutandis, awarding injunctive and equitable relief
21 including, inter alia: (i) prohibiting Defendants from engaging in the acts alleged
22 above; (ii) requiring Defendants to disgorge all of its ill-gotten gains to Plaintiffs and
23 the other Class Members motor vehicle records, or to whomever the Court deems
24 appropriate; (iii) requiring Defendants to delete all motor vehicle records collected
25 through the acts alleged above; (iv) awarding Plaintiffs and Class Members full
26 restitution of all benefits wrongfully acquired by Defendants by means of the wrongful
conduct alleged herein; and (v) ordering an accounting and constructive trust imposed
on the data, funds, or other assets obtained by unlawful means as alleged above, to
avoid dissipation, fraudulent transfers, and/or concealment of such assets by
Defendants;
27
28 e) For a preliminary and permanent injunction restraining Defendants, its officers, agents,
servants, employees, and attorneys, and those in active concert or participation with
any of them from:
1. Obtaining, directly or indirectly, Plaintiff's and Class Members' Motor Vehicle
Records, without express consent, from the State Motor Vehicle Department,
for purposes that violate the Driver's Privacy Protection Act;

- 1
- 2 2. Re-disclosing Plaintiff's and Class Members' motor vehicle records for
- 3 purposes that violate the DPPA;
- 4
- 5 3. Reselling Plaintiff's and Class Members' motor vehicle records for purposes
- 6 that violate DPPA;
- 7
- 8 4. A permanent injunction enjoining and restraining Defendants, and all persons
- 9 or entities acting in concert with them during the pendency of their action
- 10 and thereafter perpetually, from obtaining, directly or indirectly, re-disclosing,
- 11 and/or re-selling Plaintiff's and Class Members' Motor Vehicle Records,
- 12 derived in whole or part, from data maintained by their State Motor Vehicle
- 13 Department, for purposes that violate the Driver's Privacy Protection Act;
- 14 f) For an award to Plaintiffs and the Class of their costs and expenses of their litigation;
- 15 g) For an award to Plaintiffs and the Class for their reasonable attorneys' fees;
- 16 h) An award to Class Members of damages, including but not limited to: compensatory,
- 17 statutory, exemplary, aggravated, and punitive damages, as permitted by law and in
- 18 such amounts to be proven at trial;
- 19 i) For pre-and post-judgment interest as allowed by law; and
- 20 j) For such other relief as the Court may deem just and proper.

18 Dated: August 13, 2016

19 Respectfully submitted,
20 LAW OFFICES OF JOSEPH H. MALLEY P.C.

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29 Arthur Lopez, individually, and on behalf of
30 a class of similarly situated individuals